

September 13, 2012

Mr. Alfred Pollard, General Counsel  
Attn: Comments/RIN 2590-AA53  
Federal Housing Finance Agency, Eighth Floor  
400 Seventh Street, SW.  
Washington, DC 20024

Dear Mr. Pollard:

The County of Los Angeles (“the County”) and the Los Angeles Area Chamber of Commerce (“Chamber”) submit these comments in response to the Notice of Proposed Rulemaking (“NPR”) on Enterprise Underwriting Standards for properties participating in local Property Assessed Clean Energy (“PACE”) programs.<sup>1</sup> These comments are supplemental to the submission by the so-called “Joint Commenters”, a coalition of local governments, trade associations, energy companies, and nongovernmental organizations that the County and Chamber have joined.

On March 26, 2012, the County and the Chamber filed extensive joint comments in response to the Advanced Notice of Proposed Rulemaking (attached hereto and incorporated by reference). As set forth therein, the County’s program is poised to be among the largest in the nation: the Board of Supervisors have authorized the issuance of up to \$100 million in bonding authority to finance its PACE program, and approximately seventy three (73) local governments within the County, including the City of Los Angeles, have passed formal resolutions joining the County’s program.

In its comments, the County and Chamber urged, among other things, that the agency play a constructive role in the establishment of PACE programs rather than just saying no. The proposed rule does not achieve that objective, and in the view of the County and Chamber, does not comport with the agency’s fundamental legal obligation to employ reasoned decision-making. However, with appropriate modifications, the agency’s exploration of “risk-mitigation alternatives” would, and the County and Chamber respectfully urge the agency to continue down that more responsible, legally supportable, and constructive path.

In these supplemental comments, the County and Chamber reassert a fundamental predicate to the appropriate exercise of the agency’s authority that the agency has utterly failed to adequately address: whether PACE programs, with the underwriting criteria set forth in Alternative 3 plus a Reserve as set forth in the County’s approved program, create materially more risk than other traditional

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<sup>1</sup> Enterprise Underwriting Standards, 77 Fed. Reg. 36086 (proposed June 15, 2012) (to be codified at 12 CFR Part 1254) (hereinafter “NPR”).

assessments employed by local governments that also have first lien status. Given the long history of local government assessments that have enjoyed unquestioned first lien status, the County and the Chamber submit that the burden is on the agency to show that PACE assessments, with the protections being offered, justify such a radically different approach. That is a burden that the agency has failed to meet.

In the NOPR, the agency addresses this issue in the following manner:

[There is] a long-standing history of over 37,000 assessment districts nationwide that function efficiently. In those special districts, the liens also have priority over the single-family mortgage loans, and lenders have avoided additional losses. A voluntary assessment for a PACE project is different from a mandatory assessment for an essential service that cannot be easily purchased on an individual basis. Traditional assessments for water and sewer, sidewalks, street lighting, and other purposes add value to an entire community or special taxing district. NPR at 36106.

There are two fatal flaws in the agency's reasoning: (1) that PACE assessments are different is both of no moment and no legal significance; and (2) that traditional assessments "add value to an entire community" is an equally spurious and irrelevant claim.

With respect to the later point, what is relevant, based on the NOPR's extraordinarily microscopic review of the purported risks posed by PACE, is the level of risk to mortgage holders created by other assessments imposed by local governments for public benefit improvements. FHFA offers not a word on those risks, nor has it ever even considered them -- let alone take issue with them -- to the best of the County and Chamber's knowledge.

Those risks can be quite substantial. Public assessments are increasingly used for the purpose of funding major and costly street improvements, projects that local governments in many instances can not afford to take on. The tax burden imposed on properties within such special taxing districts is hardly insignificant, and has a direct bearing on the financial capacity of residential and commercial owners to meet their mortgage obligations. Yet none of these other public benefit assessments that have first lien status are subject to any underwriting criteria or other risk mitigation measures by local governments or FHFA

It is of course true that such traditional assessments "add value" to an entire community. But it is also true that local governments that have adopted PACE programs like the County's similarly believe that PACE "adds value" to the entire community. The County estimated, *prior* to seventy-three cities joining the County's program, that in its first full year of operation, the program would add \$150 million to the local economy, create 2,600 home energy retrofit and ancillary jobs, and reduce carbon emissions by 20,000 tons a year. The County believes that these benefits "add

value to the entire community” just as traditional assessment districts do. They are not different in that respect.

But for PACE, FHFA doesn’t stop at simply “adding value” – FHFA independently scrutinizes the program to determine whether there is a “net” increase in value over the cost of the program (otherwise assured by the program’s Savings to Investment Ratio of 1). That is not an analysis that FHFA requires of traditional assessments – whether the value added to the individual property is in fact “net” of the costs assumed by the property owner, costs that also have first lien status.

There is no rationale basis for this disparate and discriminatory treatment of these equally legitimate uses of local government’s traditional authority to create public benefit assessments. Nor is the fact that “a voluntary assessment for a PACE project is different from a mandatory assessment.” What is material, and the issue that FHFA has failed to address, is whether the differences, after taking into account the unique protections (e.g., underwriting criteria and a reserve) local governments like the County are committed to for PACE programs, pose materially greater risks to mortgage holders than traditional assessment districts that have first lien status and do not require lender consent.

In fact, the opposite is true. As set forth in the prior comments by the County and Chamber, the County’s Treasurer has asserted that ***“given the unique structure of [Pace] financings, the Treasurer expects that foreclosures will be significantly less common for LACEP than has been the case in prior assessment districts. Unlike other assessment district financings, LACEP is completely voluntary and individual property owners will have to meet a set of minimum credit requirements before being approved for participating in the Program.”*** (Joint Comments at 7).

The reality is that the “voluntary” nature of PACE programs, a difference from so-called “traditional” assessment districts that the agency continually highlights as though it were a negative, is precisely one of the principal reasons why PACE programs result in “significantly less” foreclosures. It is a self-selective program, one that requires time, sophistication, and commitment in addition to meeting stringent underwriting criteria. The resulting lower level of default is both logical and supported by the empirical evidence to date that underscores that foreclosures for properties with PACE loans are “significantly less” than on properties without PACE loans.

Moreover, consistent with the White House guidelines for PACE programs that the County and Chamber have endorsed, the County’s programs further minimizes the risks to mortgage holders by establishment of a significant “reserve fund” of approximately 6% (*see* attachments 1&3). These reserves effectively operate to further minimize the risk of foreclosures.

As the County and Chamber maintained in its prior submission:

*The combination of stringent credit requirements; a reserve fund; and the voluntary nature of the program makes the County's PACE safe for mortgage holders. Thus, there is a heavy burden on FHFA to support its bare assertion that PACE poses a significantly greater safety and soundness concern than tax assessments generally. That conclusion runs counter to the empirical evidence to date, common sense, and the expertise of the Treasurer of the County of Los Angeles.*

Joint Comments at 10.

### **CONCLUSION**

Accordingly, the County and the Chamber respectfully requests that FHFA modify its "risk-mitigation alternatives" to specifically authorize – without a requirement for lender consent -- PACE programs like the County's that include *both* underwriting criteria consistent with Alternative 3 *and* a reserve fund of the nature the County has committed to that further minimizes any perceived risk to mortgage holders.

Respectfully submitted

/s/

Roger Berliner, Esq.

Berliner Law PLLC  
6421 Rock Forest Drive  
#401  
Bethesda, Maryland 20817

On behalf of

**THE COUNTY OF LOS ANGELES**

&

**THE LOS ANGELES AREA CHAMBER OF  
COMMERCE**

[1ST ATTACHMENT]



# County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 713, Los Angeles, California 90012  
(213) 974-1101  
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA  
Chief Executive Officer

May 25, 2010

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

The Honorable Board of Directors  
Los Angeles County Public Works Financing Authority  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Board Members:

## **PUBLIC HEARING TO ESTABLISH THE LOS ANGELES COUNTY ENERGY PROGRAM (ALL DISTRICTS) (3 VOTES)**

### **SUBJECT**

On April 6, 2010, your Board adopted a resolution of intention (the Resolution of Intention) to implement the Los Angeles County Energy Program (LACEP or Program) to provide financing to qualified property owners within the County for the installation of distributed generation renewable energy projects and energy and water efficiency improvements to their respective properties. Pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (the Act), your Board also set a public hearing date of May 25, 2010, to formally approve the Program and to provide an opportunity for public comment. The adoption of the enclosed resolutions will establish LACEP within the boundaries of the County and authorize a program of bond financing for loans made in connection with LACEP. Following the conclusion of the public hearing, incorporated cities within the County will have the opportunity to join LACEP through the adoption of a resolution by their respective city councils. The financing plan being presented to your Board is predicated on the issuance of bonds secured by contractual assessment revenues (Assessment Bonds) and will be validated in the Superior Court of Los Angeles County.

### **IT IS RECOMMENDED THAT YOUR BOARD:**

As contemplated in the attached County Resolution Authorizing the Establishment of the Los Angeles County Energy Program, and Indenture (attachment 1):

Board of Supervisors  
GLORIA MOLINA  
First District

MARK RIDLEY-THOMAS  
Second District

ZEV YAROSLAVSKY  
Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

1. Confirm the program report (attachment 2) prepared by the Internal Services Department (ISD) in accordance with Section 5898.22 of the Act and approve the formation of the contractual assessment program in connection with LACEP;
2. Direct the establishment and implementation of LACEP as provided for in the program report and in accordance with the applicable law; and
3. Appoint and designate the Director of ISD (the Program Administrator) to enter into contractual assessments with property owners on behalf of the County.

As contemplated in the attached County Resolution Authorizing Certain Actions in Connection with the Issuance and Sale of Assessment Bonds, and Indenture (attachment 3):

1. Establish a special fund to be held in trust by the County (the "Energy Fund") to be used for the purpose of administering LACEP;
2. Approve the issuance of the Assessment Bonds for the purpose of funding LACEP and authorize the execution and delivery of various financing documents in substantially the form presented to your Board at this public hearing; and
3. Authorize the Chief Executive Officer (CEO) and the Treasurer and Tax Collector (Treasurer), or their designees, in consultation with County Counsel and with the assistance of bond counsel, to prepare and cause to be filed and prosecuted to completion all proceedings required for judicial validation of the contractual assessments and LACEP financing instruments.

**IT IS RECOMMENDED THAT YOUR BOARD, ACTING AS THE BOARD OF DIRECTORS OF THE LOS ANGELES COUNTY PUBLIC WORKS FINANCING AUTHORITY:**

As contemplated in the attached Los Angeles County Public Works Financing Authority (Authority) Resolution Authorizing Certain Actions in Connection with the Issuance and Sale of Assessment Bonds, and Indenture (attachment 4):

1. Approve the issuance of the Assessment Bonds for the purpose of funding LACEP and authorize the execution and delivery of various financing documents in substantially the form presented to your Board at this public hearing; and
2. Authorize the CEO and Treasurer, or their designees, in consultation with County Counsel and with the assistance of bond counsel, to prepare and cause to be filed and prosecuted to completion all proceedings required for judicial validation of the contractual assessments and LACEP financing instruments.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The public hearing with respect to LACEP is being held to allow interested persons the opportunity to comment upon, object to, or present evidence with regard to the proposed contractual assessment program. The public hearing is required pursuant to the Act and will serve to formally establish the Program within the boundaries of the County. Following

completion of the public hearing, the County will pursue judicial action to validate the priority status of the contractual assessment lien and to establish a program of bond financing to provide funding for loans made in connection with LACEP.

As referenced in prior correspondence to your Board, LACEP is being formed in accordance with California Assembly Bill 811 (AB 811), which was approved by the State Legislature and signed by the Governor on July 21, 2008. LACEP is intended to help property owners make capital investments in distributed generation renewable energy sources and energy efficiency and water efficiency improvements (collectively, the Improvements) that will provide long-term efficiencies and reduced energy bills. The Program will provide a financing mechanism for these improvements through an assessment contract between the County and the property owner, pursuant to which the County will disburse a specified amount of funding in the form of a loan to the property owner. The property owner will repay this loan through contractual assessments to be included on the annual property tax bill. If the owner sells the subject property prior to full repayment of the loan, the obligation remains a lien on the subject property and transfers to the new property owner. The County intends to finance the Program by issuing (or causing to be issued) bonds payable from contractual assessment revenues. Participation in the Program is completely voluntary and property taxes for non-participating property owners will not be affected by the County's implementation of LACEP. In addition, the Improvements will not generally be subject to reappraisal by the County Assessor unless they are included as part of a major remodeling or renovation that results in a structure substantially equivalent to new construction.<sup>1</sup>

In connection with your Board's adoption of the Resolution of Intention, on April 6, 2010, ISD was directed to prepare a report (Report) detailing certain items in relation to LACEP, as required by Section 5898.22 of the Act. This Report has been filed with the Executive Office of your Board and is included as part of the public hearing. In the Report, the Program Administrator provides the following information regarding LACEP:

- A description of the territory wherein contractual assessments will be made available and a process for cities to join LACEP;
- Identification of the types of facilities, distributed generation renewable energy sources, or energy or water efficiency improvements that may be financed through the use of contractual assessments;
- A financing plan for raising capital and funding installation of the Improvements; and
- A draft assessment contract specifying the terms and conditions that will be applicable to the property owner and the County.

In addition to the above information, the Report also provides a summary of the benefits to be recognized following the implementation of LACEP. By the end of 2012, LACEP seeks to achieve energy retrofits for 15,000 single-family homes in unincorporated areas of the County, with the potential to add \$150 million to the local economy. LACEP also intends to create an estimated 1,600 home energy retrofit jobs and as many as 1,000 ancillary jobs in fields such as

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<sup>1</sup> An exception is the construction or addition of a qualified solar energy system, which is specifically excluded from reassessment under Section 73 of the California Revenue and Taxation Code.

workforce development, local manufacturing, product distribution, and research and development. These improvements to the local economy are in addition to the environmental objectives associated with LACEP and the goal of reducing the County's annual greenhouse gas emissions (attributable to its existing housing stock) by 20,000 tons of carbon dioxide annually. The benefits to both the economy and the environment are expected to increase dramatically once individual cities join LACEP, as the above forecasts were quantified solely for unincorporated areas of the County.

The program design elements of LACEP are being managed by ISD and a consultant team (Project Team) that has been engaged to assist with the development of the Program. This process is near completion and will establish the criteria for eligible projects and properties, the available rebates and incentives, and the processes for approving and funding the Improvements. The details of the program design phase are currently being presented to various stakeholders (County staff, cities, utilities, contractors, regulatory bodies) for comment and review. The Project Team is also preparing a Program Administration Plan that will include tools for administering, tracking and reporting all necessary data concerning projects, loans, and program benefits. This effort will include a number of activities, such as coordination with stakeholders involved with building efficiency and renewable resource retrofit programs, development and implementation of a marketing and outreach strategy, and implementation of Environmental Service Centers (ESCs). The ESCs will make use of electronic media, community events and strategically located venues to promote environmental programs and LACEP. To assist the public and other stakeholders in becoming acquainted with LACEP, a manned, toll-free number has been established and a website has been activated to provide Program information and updates.

Following your Board's adoption of LACEP on May 25, 2010, major elements of the program implementation phase will begin. By July 2010, a "toolkit" of information will be made available for cities to assist them in joining the Program and promoting it within their jurisdictions. Also by July, the ESCs will be provided with program materials and a deployment plan will be implemented. The goal is to formally launch LACEP in September 2010 (following the conclusion of the judicial validation) and secure participation from a majority of the 88 cities in the County. While the initial implementation phase will be limited to residential properties, a commercial program is also being developed in accordance with AB 811. Additional details regarding the implementation of the residential program, and the future design of a commercial platform, will be provided to your Board in bi-monthly reports submitted by ISD.

#### **IMPLEMENTATION OF STRATEGIC PLAN GOALS**

By providing financing that may not otherwise be readily available to property owners, the County is promoting energy and water conservation, and the reduction of greenhouse gas emissions, which supports the County Strategic Plan Goal 1, Operational Effectiveness. This action also supports the County Strategic Plan Goal 3, Community and Municipal Services, by providing property owners a means to finance improvements that will result in utility cost-savings and improve their quality of life.

## **FISCAL IMPACT/FINANCING**

### **Grant Funding**

In October 2009, your Board accepted the County's allocation of \$15.4 million in Energy Efficiency and Conservation Block Grant (EECBG) funding received under the American Recovery and Reinvestment Act. The County has identified approximately \$12.2 million of this EECBG funding to support the implementation of its AB 811 program and related activities, including ESCs, public information and outreach.

In November 2009, ISD, in collaboration with the Association of Bay Area Governments, the Sacramento Municipal Utility District, and the San Diego-based California Center for Sustainable Energy, submitted a single, statewide application to the United States Department of Energy (DOE) Federal Competitive EECBG grant program for up to \$75 million in funding. In April 2010, ISD was notified that its proposal was awarded a total of \$30 million. Given that this grant award represents 40% of the amount requested, and that the grant is to be shared with the other regional partners, the County's share will be approximately \$14 million. This grant funding, per DOE requirements, will support development and implementation of model, regional programs that demonstrate greater participation in existing building retrofits and greater energy efficiency savings. ISD has submitted correspondence requesting your Board's acceptance of this grant.

ISD has also negotiated with the California Energy Commission (CEC) to obtain additional funding support for LACEP. In prior communications to your Board, it was reported that representatives from ISD and the CEO met with CEC Commissioners and staff in early March, 2010 to discuss the County's unsuccessful grant application. Following this meeting, the CEC expressed a desire to assist the County and provide funding for its AB 811 program. The CEC has agreed to provide the County with approximately \$8 million to help implement LACEP within those cities that choose to participate in the Program. When the final terms and conditions of this agreement have been negotiated, ISD will prepare separate correspondence to seek your Board's acceptance of funding from the CEC.

### **Bond Financing**

The County intends to finance the loans to participating property owners through a public sale of the Assessment Bonds. Pursuant to the Improvement Bond Act of 1915 and Division 10 of the California Streets and Highways Code, local governments are authorized to issue bonds secured by the voluntary contractual assessments of property owners within their jurisdictions. Proceeds from the sale of the Assessment Bonds will be used for the purpose of funding loans to property owners who have been approved for participation in LACEP. Because the Improvements are being installed on private property, however, LACEP does not currently have the ability to issue the Assessment Bonds on a tax-exempt basis. The legal requirement to issue taxable bonds will significantly increase the interest cost of borrowing to LACEP and could result in interest rates that are about 35% higher than those associated with comparable bonds sold on a tax-exempt basis. It is important to note that neither the County's credit nor its credit ratings will in any way support or guarantee the Assessment Bonds issued in connection with LACEP.

It is anticipated that LACEP will need to accumulate a certain number of approved loans before it is able to enter the public capital markets and sell bonds. This is due both to the liquidity requirements of municipal bond investors and the positive efficiencies derived from a larger bond financing. Given its experience with prior assessment districts, the Treasurer forecasts that a successful bond sale will require a minimum of \$10 million of loans (e.g., 1,000 loans at an average value of \$10,000 each). Prior to achieving the necessary loan volume, LACEP will pursue a number of interim financing options, including loans from large commercial banks and the private placement of securities with qualified institutional investors. In every instance, the interim financing will be secured by the contractual assessments and will be structured to allow for a "take-out" financing that involves the public sale of Assessment Bonds.

The adoption of the attached resolutions will authorize an initial issuance of the Assessment Bonds in an aggregate principal amount of not to exceed \$100 million. It is anticipated that the first public issuance of bonds will be considerably less than \$100 million given that LACEP may achieve economies of scale at levels as low as \$10 million. The final maturity of the Assessment Bonds will be limited to the estimated useful life of the Improvements, and on average, is expected to be 15 - 20 years. The interest rate on the Assessment Bonds will be determined by conditions in the taxable bond market at the time of the sale. As referenced earlier, the taxable status of the Assessment Bonds will have a significant impact on borrowing costs and will cause these bonds to be issued at interest rates above traditional tax-exempt municipal bond rates. In the current market, it is estimated that the interest rate on taxable assessment bonds will be within a range of 7.0% to 7.5%.

The interest rate obtained on the Assessment Bonds will be the single greatest factor in determining the borrowing cost for individual property owners who choose to participate in LACEP. In addition to funding debt service payments on the Assessment Bonds, contractual assessment revenue will also be used to finance a bond reserve fund, pay costs of issuance on the bonds, and fund certain administrative costs of the Program. It is anticipated that participants in LACEP will assume an all-in borrowing cost on their assessments that is approximately 200 basis points (2.0%) higher than the yield on the Assessment Bonds. To the extent that your Board takes action to appropriate additional grant funding for the purposes of LACEP, this "spread" of 200 basis points may be narrowed and the borrowing cost to participants reduced below the current estimate of 9.0% to 9.5%. The ability to lower participant borrowing costs is significant given that average interest rates for home equity loans in Los Angeles County were approximately 8.75% as of May 1, 2010.

The goal of providing competitive loan rates to participating property owners is one of the most important near-term objectives of LACEP. Certain factors that will help to reduce this borrowing cost include potential changes to Federal and State legislation, nationwide expansion of green energy financing programs, and the development of underwriting criteria that will minimize the risk of loan default. With respect to this latter category, the Treasurer will pursue underwriting criteria, largely dictated by the bond market, to help ensure that only creditworthy individuals are approved for loans under LACEP. Certain minimum requirements that LACEP is considering are as follows:

- Property taxes and assessments are current on the property and have not been delinquent for a period of 5 years (or since the date of the most recent transfer if less than 5 years);

- Property owner is current on mortgage, has not defaulted on the deed(s) of trust, and can legally enter into the Program;
- Improvement costs are reasonable to property value and must meet a value-to-lien ratio of 10:1 or greater; and
- Property must meet a positive equity test and not exceed a maximum loan-to-value ratio.<sup>2</sup>

Of the four underwriting criteria listed above, the one that is likely to have the greatest influence on bond yields is the positive equity test. Investors are highly sensitive to loan-to-value ratios and may be reluctant to purchase assessment bonds that allow for loan-to-value ratios that exceed 80%. The ability to structure a contractual assessment program with strict underwriting criteria will significantly help to reduce borrowing costs to participating property owners. It will also serve to limit the number of property tax delinquencies and help mitigate the need to initiate foreclosure proceedings.

### **Foreclosure Policies**

In connection with the issuance of the Assessment Bonds, the County will be required to provide a judicial foreclosure covenant that applies to all delinquent LACEP assessments. The ability to initiate foreclosure proceedings in the interest of bondholders has been an integral credit feature for assessment district and community facilities district (Mello-Roos) financings in California for more than two decades. The County has completed twenty-three (23) such financings over this period and has always included a foreclosure covenant in its commitment to bondholders. The ability to sell assessment bonds without a specific foreclosure covenant is highly uncertain in today's market, and even if feasible, would result in much higher borrowing costs for a program such as LACEP.

It is therefore expected that the County will retain the right, but not necessarily the obligation, to initiate judicial foreclosure as soon as a property owner becomes delinquent on the annual assessment associated with LACEP (a property tax bill is deemed to be delinquent if any portion of the amount due remains unpaid as of June 30th). While the County will have the ability to commence foreclosure proceedings immediately following any delinquency, the requirement to do so will only take effect if there is a corresponding impact to the security provisions of the Assessment Bonds. Specifically, the County will be obligated to pursue judicial foreclosure whenever the reserve fund established for the Assessment Bonds (the Reserve Fund) is reduced to a level below its initial funding requirement. The Reserve Fund is designed to function as a source of repayment to bondholders in the event that delinquencies prevent assessment revenue from satisfying the principal and interest obligations on the Assessment Bonds.

The incorporation of a reserve fund test in the foreclosure covenant is significant in that it can serve to reduce the need to pursue judicial foreclosure proceedings. The Reserve Fund is typically maintained at levels in excess of its initial requirement due to interest earnings that

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<sup>2</sup> The loan-to-value ratio is defined as the aggregate total of all liens secured by real estate mortgages divided by either the assessed value of the property or the market value as determined by a third-party appraisal.

have accumulated during the tax year. These interest earnings can be used to offset any reduction in assessment revenue that might result in a draw on the Reserve Fund. Furthermore, LACEP will have the ability to supplement the Reserve Fund from other funding sources should this be necessary in order to avoid a foreclosure judgment. For example, LACEP could choose to defer certain administrative costs and use these monies as an additional means of meeting the minimum reserve requirement.

Given the unique structure of AB 811 financings, the Treasurer expects that foreclosures will be significantly less common for LACEP than has been the case in prior assessment districts. Unlike other assessment district financings, LACEP is completely voluntary and individual property owners will have to meet a set of minimum credit requirements before being approved for participation in the Program. Furthermore, the County will have some discretion to pursue the larger delinquencies first and not to foreclose on every delinquency that contributes to or precipitates a draw on the Reserve Fund. During any judicial foreclosure proceeding, the County will seek to recover only those amounts associated with delinquent LACEP assessments and will not pursue the collection of other delinquent property taxes. Furthermore, the entire amount of the assessment will not become due upon a delinquency and there will be no acceleration of future assessment amounts.

The specific details of a LACEP foreclosure policy will be determined in connection with the sale of the Assessment Bonds to public and/or private investors. Under no circumstances will LACEP adopt a formal set of foreclosure policies without returning to your Board for approval. It is anticipated that the final recommendation to your Board will reflect policies similar to those presented in this letter and will be determined in large part by market conditions at the time of the bond sale. The Treasurer will return to the Board for specific authorization to sell each series of bonds and will provide detailed information regarding all foreclosure covenants included in the financing documents.

#### **FACTS AND PROVISIONS/ LEGAL REQUIREMENTS**

These proceedings are governed by Chapter 29 of Part 3 of Division 7 of the Streets and Highways Code of the State of California. Pursuant to this statute, counties and cities are authorized to assist free and willing property owners in financing improvements that are permanently fixed to residential, commercial, industrial, or other real property through a voluntary contractual assessment program.

In accordance with Section 5989.30 of the Act, as amended by AB 811, the levy and collection of assessments pursuant to Chapter 29 are valid under existing law and provide for the priority status of an AB 811 assessment lien. The County has sought and relied upon the legal opinion of its bond counsel to confirm the validity of the LACEP assessment and the priority status of contractual assessments liens. At the direction of County Counsel, LACEP will further confirm such conclusion by initiating a formal judicial validation proceeding. A judgment by the Los Angeles County Superior Court regarding the validity of LACEP, and the priority status of the ensuing liens, is of great importance to potential investors and will assist the Treasurer in pricing the Assessment Bonds.

Following your Board's adoption of the attached resolutions, and pursuant to Section 860 of the Code of Civil Procedure (Validation Statute), court proceedings will be initiated by the filing of a

formal validation complaint with the Los Angeles County Superior Court to obtain an order declaring the validity of LACEP, the priority status of the lien, and the validity of the LACEP financing instruments submitted to your Board. Under the Validation Statute, a summons, which provides a summary of the matter the County seeks to validate, will contain a notice directed to all interested parties that they may contest the legality or the validity of the matter by appearing in person and filing a written response to the complaint not later than the date specified in the summons. Matters, including constitutional challenges, must be raised within the statutory limitations period or they are waived. It is anticipated that the validation proceedings will take approximately 90-120 days to complete.

**ENVIRONMENTAL DOCUMENTATION**

On April 6, 2010, your Board found that the proposed project is exempt from the California Environmental Quality Act and determined that it will not have a significant impact on the environment.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

The implementation of the Program will have no impact on current services. The Program will reduce greenhouse gases, improve energy efficiency, and create jobs within the County.

**CONCLUSION**

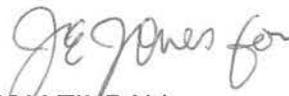
Upon approval of the attached resolutions, it is requested that the Executive Officer of the Board return three originally executed copies to the Chief Executive Office, Internal Services Department, and Treasurer and Tax Collector.

Respectfully submitted,



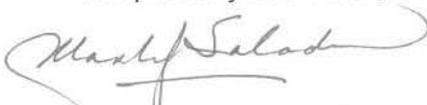
WILLIAM T FUJIOKA  
Chief Executive Officer

Respectfully submitted,



TOM TINDALL  
Director, Internal Services Department

Respectfully submitted,



MARK J. SALADINO  
Treasurer and Tax Collector

Honorable Board of Supervisors  
May 25, 2010  
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Attachments

c:     Assessor  
       County Counsel  
       Executive Office, Board of Supervisors  
       Auditor-Controller

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION WITH AND CONFIRMING THE REPORT REGARDING THE ESTABLISHMENT OF A CONTRACTUAL ASSESSMENT PROGRAM TO FINANCE DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES AND ENERGY AND WATER EFFICIENCY IMPROVEMENTS; CONFIRMING ASSESSMENTS TO BE LEVIED WITHIN THE PARAMETERS OF THE REPORT; AND TAKING CERTAIN OTHER ACTIONS

WHEREAS, on April 6, 2010, the Board of Supervisors (the "Board of Supervisors") of the County of Los Angeles, a political subdivision of the State of California (the "County"), adopted its resolution declaring its intention to order the implementation of a contractual assessment program to finance the installation of distributed generation renewable energy sources and energy and water efficiency improvements (the "Resolution of Intention") pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (the "Act"); and

WHEREAS, the Resolution of Intention directed the Director of the Internal Services Department of the County ("Program Administrator") to prepare and file with the Board of Supervisors a report (the "Report") in accordance with Section 5898.22 of the Act and the Program Administrator has filed said Report with the Board of Supervisors; and

WHEREAS, the Resolution of Intention set the time and place for a hearing on the proposed Los Angeles County Energy Program ("LACEP") described in the Report; and

WHEREAS, the Resolution of Intention described the proposed arrangements for funding LACEP, including certain parameters for the issuance of bonds pursuant to the Act, which bonds will be repaid by voluntary contractual assessments; and

WHEREAS, on May 25, 2010, following notice duly given in accordance with law, the Board of Supervisors held a full and fair public hearing on the Report, LACEP and matters relating thereto, at which interested persons were afforded the opportunity to comment upon, object to, or present evidence with regard to the proposed LACEP or any of its particulars, including the extent of the area proposed to be included within LACEP, the terms and conditions of the draft contract with landowners (as further described herein, the "Assessment Contract") assessment, and the proposed financing provisions; and

WHEREAS, the Report sets forth each of the items required to be contained therein pursuant to Section 5898.22 of the Act; and

WHEREAS, the Board of Supervisors, having considered all oral and written testimony, desires to confirm the Report and proceed with the establishment of LACEP;

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES AS FOLLOWS:

Section 1. The recitals set forth hereinabove are true and correct in all respects.

Section 2. The Board of Supervisors finds and determines that all actions required to be taken and all conditions required to be satisfied prior to action by the Board of Supervisors pursuant to law, including the Act, have been taken and satisfied.

Section 3. The Board of Supervisors hereby confirms the Report and approves the formation of the contractual assessment program in connection with LACEP. The Board of Supervisors also confirms the assessment for the cost of the improvements and approves the maximum annual administrative assessment of \$100 to be levied within the parameters of the Report. The Board of Supervisors directs the establishment of LACEP and the implementation of LACEP as provided in the Report and in accordance with the applicable law.

Section 4. The Board of Supervisors hereby appoints and designates the Program Administrator to enter into Assessment Contracts with property owners on behalf of the County and perform the other duties and functions of the Superintendent of Streets for purposes of California Streets and Highways Code, Section 3100 *et seq.*, in connection with LACEP.

Section 5. The Clerk of the Board of Supervisors is hereby directed to cause to be recorded in the office of the Program Administrator, as designated Superintendent of Streets, and in the office of the Registrar-Recorder/County Clerk of the County of Los Angeles (the "County Recorder") a copy of the assessment diagram setting forth the boundaries of LACEP and notice of the existence and amount of each contractual assessment in connection with LACEP, which notice may be amended from time to time and shall set forth the names of all landowners who have entered into Assessment Contracts with the County and their related parcels or lots, pursuant to Section 5898.32 of the Act and Section 3100 *et seq.* of the California Streets and Highways Code.

Section 6. The Clerk of the Board of Supervisors is further directed to cause to be recorded in the office of the County Recorder, concurrently with the instrument creating the voluntary contractual assessment, a document entitled "Payment of Contractual Assessment Required" pursuant to Section 5898.24(d) of the Act. The County Recorder shall only be responsible for examining such document and determining that it contains the information required by Section 5898.24(d)(2)(A), (E) and (F) of the Act and for indexing the document under the names of the persons and entities identified in Section 5898.24(d)(2)(A) and (E) of the Act. The County Recorder shall not examine any other information contained in such document.

Section 7. The Board of Supervisors hereby designates the Auditor-Controller as the office responsible for annually preparing the current roll of assessment obligations by assessor's parcel number on property subject to a voluntary contractual assessment and directs the Program Administrator to establish procedures to promptly respond to inquiries concerning current and future estimated liability for a voluntary contractual assessment; provided that neither the Auditor-Controller, the Program Administrator nor the Board of Supervisors shall be liable if any estimate of future voluntary contractual assessment liability is inaccurate or for any failure of any seller to request notice pursuant to the Act or to provide the notice to a buyer.

Section 8. The Program Administrator is hereby authorized and directed to do all acts and things which may be required of him by this Resolution, or which may be necessary or desirable in carrying out LACEP as described in the Report, and all matters incidental thereto, including without limitation, to make clarifying changes to the Report; after consulting with County Counsel, to modify the draft application and the draft Assessment Contract set forth in the Report; and to modify the schedule of eligible improvements attached to the Report as deemed necessary or desirable after consulting with other County staff.

Section 9. This Resolution shall be effective upon its adoption by the Board of Supervisors.

The foregoing Resolution was on the 25<sup>th</sup> day of May, 2010, adopted by the Board of Supervisors of the County of Los Angeles and ex-officio the governing body of all other special assessment and taxing districts, agencies and authorities for which said Board so acts.



SACHI A. HAMAI  
Executive Officer of the  
Board of Supervisors of the  
County of Los Angeles

By: Sachelle Smitherman  
Deputy

APPROVED AS TO FORM:

ANDREA SHERIDAN ORDIN  
County Counsel

By: Behnaz Tashakorian  
Behnaz Tashakorian  
Deputy County Counsel

*Los Angeles County*  
*Energy Program*  
**(LACEP)**



**PROGRAM REPORT**

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## *I. INTRODUCTION*

The Los Angeles County Energy Program (“LACEP” or “Program”) is intended to help property owners make capital investments in distributed generation renewable energy sources and energy efficiency and water efficiency improvements (collectively known as “Improvements”) that will provide long-term benefits and reduced energy bills. The Program will provide a financing mechanism for the Improvements through an assessment contract (the “Assessment Contract”) between the County of Los Angeles (the “County”) and the property owner, pursuant to which the County will disburse a specified amount to the property owner. The property owner will pay contractual assessments levied against the property through annual installments on the property tax bill. If the owner sells the subject property prior to full repayment of the assessment, the repayment obligation remains a lien on the subject property. The County intends to finance the Program in part by issuing (or causing to be issued) bonds payable from contractual assessment revenues. Participation in the Program is completely voluntary and property taxes for non-participating property owners are unaffected by the Program.

This Program Report (“Report”) is prepared pursuant to Section 5898.22 of Chapter 29 of the California Streets and Highways Code (“Chapter 29”) in connection the establishment of LACEP. It includes the following:

- 1) A map showing the boundaries of the Program - the territory within which contractual assessments are proposed to be offered. See Appendix A attached hereto.
- 2) A draft Assessment Contract specifying the terms and conditions that would be applicable to the property owner and the County. See Appendix C attached hereto.
- 3) A statement of County policies concerning voluntary contractual assessments, including all of the following:
  - Identification of the types of facilities, distributed generation renewable energy sources, or energy or water efficiency improvements that may be financed through the use of contractual assessments.
  - Identification of one or more County officials authorized to enter into voluntary contractual assessments on behalf of the County.
  - A maximum aggregate dollar amount of voluntary contractual assessments.
- 4) A method for establishing priority order among the requests from property owners for financing through LACEP.
- 5) A financing plan for raising capital.
- 6) A report on the results of consultations with the County Auditor-Controller concerning the additional fees, if any, that will be charged for incorporating the proposed voluntary contractual assessments into the general taxes of the County on real property, and a plan for financing the payment of those fees.

### *Background*

Widespread implementation of distributed generation renewable energy sources and energy efficiency and water efficiency measures in existing buildings within the County will help the State of California (“State”) reach the greenhouse gas reduction goals set forth under State Assembly Bill 32 (“AB 32”) and help the County and surrounding cities achieve their own targeted reductions. Participating property owners can help to achieve greenhouse gas reductions, reduce water and energy use, and save money by investing in these measures.

Chapter 29 authorizes various public agencies, including counties and cities, to designate areas within which free and willing property owners can enter into contractual assessments to finance the installation of Improvements that are permanently fixed to residential, commercial, industrial, agriculture or other real property. LACEP is the voluntary contractual assessment program developed by the County pursuant to

Chapter 29. Any assessments and liens under LACEP are levied only with the consent of free and willing owners of the property on which Improvements are to be made. The Program will provide financing for qualifying property owners within the County to install Improvements pursuant to the terms and conditions of the Assessment Contracts. Property owners will pay contractual assessments levied against their property in installments on their property tax bills. Each contractual assessment is tied directly to the applicable property and any unpaid amount at sale or other disposition of the property will remain on the property and become the responsibility of the subsequent owner.

### *Program Benefits*

LACEP is intended to provide multiple benefits, including the potential for reduced utility bills for participating property owners. LACEP also offers a means of financing Improvements with a lower equity contribution than may be required in a conventional financing and establishes a loan obligation that is attached to the property and not to the individual borrower. The financing is intended to be competitive with conventional fixed-rate loans and provide for a streamlined financing and repayment process. All available State, utility or other energy efficiency, water efficiency or renewable energy rebates, incentives and all State and federal tax credits remain available to the property owner in connection with the Improvements (subject to applicable rules, restrictions, regulations and the current status of programs administered by other such entities), unless otherwise specified.

Incorporated cities may participate in LACEP without incurring the costs of forming separate programs because LACEP's geographical boundary is coterminous with the County's boundaries and includes, subject to such cities' approval of participation in LACEP, all 88 incorporated cities. Having a single program available to all residents of the County is anticipated to increase participation by eliminating confusion for residents in finding the appropriate program. Cities may join LACEP by adopting a resolution allowing property owners in their respective jurisdictions to apply for financing and implement Improvements under LACEP.

The Program seeks to mitigate long-term regional greenhouse gas production through the reduction of energy usage from traditional utility sources and help the County and participating cities satisfy the State's greenhouse gas reduction goals under AB 32. When it was signed into law in 2006, AB 32 established statewide goals for the reduction of greenhouse gas emissions and may yet require counties and cities to adopt regional greenhouse gas emission limits similar to the statewide target of achieving 1990 levels of greenhouse gas emissions by 2020. To the extent permitted by law, the County will hold and retain any carbon credits, offsets, carbon cap allocations, or other benefits attributable to the Improvements financed by LACEP. It is the intention of the County to apply any benefits resulting from such carbon credits to the furtherance of LACEP.

LACEP has the potential to provide a significant industry shift in the region towards an energy efficiency, water efficiency and renewable energy economy. LACEP aims to be a catalyst in spurring a new "green" economy in the County by supporting energy project inspection and installation jobs, job training and workforce development, local manufacturing and distribution, research and development, and marketing and outreach.

For the first few years of the Program, American Recovery and Reinvestment Act ("ARRA") grants will be used to partially fund LACEP. By the end of the ARRA funding term in 2012, LACEP seeks to achieve the following goals:

1. Retrofit 15,000 single-family homes with a 20% average energy reduction.
2. Create 1,600 home energy retrofit jobs and 1,000 ancillary jobs.
3. Reduce annual purchased energy consumption in retrofitted homes by an aggregate 150 billion British Thermal Units and \$2 million in utility charges per year.
4. Reduce the County's annual greenhouse gas emissions attributable to energy consumption in its existing housing stock by 20,000 tons of carbon dioxide.

The benefits to both the regional economy and the environment are expected to increase once individual cities join LACEP, as the above forecasts are quantified solely for unincorporated areas of the County.

### *Program Administration*

The Program will be governed by the Board of Supervisors of the County of Los Angeles, which will approve the Program parameters, approve the issuance of bonds, and delegate authority to authorized officers to administer the Program.

The Director of the County's Internal Services Department will serve as the Program Administrator and will provide day-to-day management of the Program, including design, implementation, and administration. The authority to approve and enter into individual Assessment Contracts will be delegated by the Board of Supervisors to the Program Administrator.

The County Office of Sustainability ("COS"), within the Internal Services Department, and the Program Administrator will manage all Program activities, including, but not limited to, the following:

- Marketing and community outreach;
- Energy surveys and technical support for individual projects;
- Customer service, including question and answer support to interested Program participants;
- Assisting in project development;
- Processing Program applications;
- Managing and tracking funds available for financing Improvements;
- Managing and tracking progress of the Improvements and financing therefor;
- Tracking individual and collective energy and greenhouse gas benefits;
- Integrating LACEP with other County, State, utility and regional rebate/incentive programs;
- Working and coordinating with participating cities and other jurisdictions;
- Providing information on local and regional environmental programs; and
- Reporting progress and expenditures according to mandated reporting methods applicable to appropriated funds, including amounts received pursuant to ARRA.

These activities are intended to provide quality Program design, administration and implementation for qualifying property owners who may otherwise be unable to finance and install the Improvements.

### *Program Duration*

Unless otherwise directed by the Board of Supervisors, the Program will continue as long as there is sufficient demand and funding for the Improvements.

## ***II. PROGRAM REQUIREMENTS***

### *Geographic Parameters and Participating City Requirements*

LACEP is available in the unincorporated areas of the County immediately upon establishment of the Program by the Board of Supervisors. Cities within the County may join LACEP and make assessment financing available to qualifying property owners located within their city's boundaries. Anytime after the County's establishment of the Program, a city's legislative body may adopt a resolution requesting inclusion in the County Program. Pursuant to such resolution to participate in the Program, the city will find and declare that the properties in the city's incorporated area will benefit from participation. Further, the city's resolution will authorize the County to set the terms of LACEP, implement the Program, and take action necessary for financing the Improvements.

Participation in LACEP offers cities and their property owners the following advantages:

- An opportunity to save money through energy and water efficiency improvements;
- The ability to take advantage of substantial financial incentives and rebates from multiple sources;
- A financing mechanism that establishes an obligation that remains attached to the property; and
- Job creation and stimulation of the economy.

Cities may elect to withdraw from participation in LACEP by adopting a resolution terminating their involvement. If a participating city elects to withdraw from LACEP, no future assessment financing will be made in that city, but assessment obligations made previous to the city's termination will remain in effect. A map showing the Proposed Program boundaries is attached in Appendix A.

### *Eligible Owners and Properties*

All owners of improved real property within participating areas are eligible to submit an application for LACEP. Qualifying property owners may be individuals, associations, business entities, cooperatives and any owner who pays real property taxes. At this time, financing through LACEP is not available for properties that are not subject to property taxes, such as governmental entities and certain non-profit corporations.

To protect the Program from defaults and to improve access to the capital markets, property owners must meet the following minimum requirements to qualify for financing:

- Property is located within Los Angeles County, and if within the boundaries of a city, the city has adopted a resolution to join the Program;
- Applicant is the legal owner of the property;
- All legal owners of the property agree to participate in the Program;
- The property is not subject to involuntary liens as set forth in the Assessment Contract or any other Program document;
- Property taxes and assessments are current on the property and have not been delinquent for a period up to 5 years (or since the date of the most recent transfer if less than 5 years);
- Property owner certifies that he/she is not in bankruptcy and the property is not an asset in a bankruptcy proceeding;
- Property owner certifies that he/she has not declared bankruptcy within the last 10 years;
- Property owner certifies and demonstrates that he/she is current on his/her mortgage, has not defaulted on the deed(s) of trust and can legally enter into the Program;
- Improvement costs are reasonable to property value. Property must meet a minimum value-to-lien ratio<sup>1</sup>;
- Property must meet a positive equity test and not exceed a maximum loan-to-value<sup>2</sup> ratio; and
- Property is subject to the appropriate jurisdiction's (County, city, or town) permitting and inspections and all other applicable federal, State, and local codes and regulations.

Property owners may submit more than one application for funding under the Program if additional Improvements are desired by the owner. However, all existing criteria must be met at the time of each new application. Valuation of the property will reflect either the assessed value or the market value as determined by using established industry approved methodologies. Costs for the scope of work will be based on contractor estimates, quotes provided by the property owner, and general industry standards. Additional due diligence or underwriting criteria may be required for the financing of large projects.

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<sup>1</sup> Value of the property divided by the amount of the contractual assessment.

<sup>2</sup> Aggregate total of all liens secured by real estate mortgages on the property divided by the value of the property.

The Program Administrator may exercise discretion in determining eligibility and any additional criteria required for financing Improvements. Furthermore, the minimum eligibility requirements provided in this Report are subject to change pursuant to the future financing needs of the Program.

### Eligible Improvements

The Program provides property owners the opportunity to take advantage of a wide range of Improvements, subject to the following provisions:

- The Program will only finance distributed generation renewable energy sources and energy efficiency and water efficiency measures that are permanently fixed to the property.
- Property owners who elect to engage in broader retrofit projects (such as residential or nonresidential remodeling) will only be provided financing for costs associated with Improvements available under the Program.
- The Program is intended to finance the replacement of working, inefficient equipment and building materials and the installation of new equipment and building materials that reduce energy consumption (beyond that required by existing, applicable building codes), produce renewable energy, or reduce energy in connection with water usage. The Program will also make financing available for purchasers of residential, commercial or industrial properties who wish to add Improvements after transfer of title is complete.
- Property owners are responsible for the Improvements installed on their property. Property owners must address performance and other system-related issues directly with the installer in accordance with the terms of their contract with the installer. Property owners are responsible for maintenance and repair of the Improvements.

Examples of Improvements available for financing under LACEP are provided in Appendix B.

### Eligible Costs

Eligible costs of the Improvements include the cost of surveys and audits, permits<sup>3</sup> and inspections, equipment, installation from licensed, approved professionals, and follow-up inspections. Installation costs may include, but are not limited to, energy audit consultations, labor, design, drafting, engineering, permit fees, and inspection charges. A qualified contractor of the property owner's choice can be selected to complete installation of Improvements.

For each property, the Program Administrator will determine whether the estimated equipment and installation costs are reasonable. The Program Administrator will evaluate market conditions and may require the property owner to provide additional bids to determine whether costs are reasonable. While the property owner will be able to choose the contractor of his/her choice, the amount eligible for the LACEP financing may be limited to the amount deemed reasonable by the Program Administrator. Projects that exceed a certain size and dollar amount may be subject to additional review.

## ***III. PROGRAM FINANCING***

### Strategy to Raise Capital

The County intends to raise capital for the Program through one or more of the following financing arrangements:

- Issuing or causing the issuance of bonds pursuant to Section 5898.28 of the Streets and Highways Code, the principal and interest of which will be repaid from contractual assessments;

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<sup>3</sup> All Improvements that require permits will be required to obtain such a permit from the local jurisdiction. Final inspection will ensure that the Improvements were completed.

- Advancement of certain County funds or funds held by the County Treasurer and Tax Collector, which will be repaid through contractual assessments or reimbursed from proceeds of a debt issuance;
- Application of funds received pursuant to federal and State programs and available for LACEP financing purposes;
- Issuing debt or entering into loan arrangements to fund the Improvements; and
- Private or owner-arranged financing.

To the extent that the County issues debt, it is expected to include a debt service reserve fund in the amount sufficient to enhance the marketability of the debt. The proceeds of the debt issuance will be applied to cover the costs of Improvements, fund the debt service reserve fund, and pay costs of issuance of the debt. The County may also pursue other financing options not listed above should such options benefit the ongoing viability of the Program.

### *The Energy Fund*

The County will create a special fund, the Energy Fund ("Fund"), which will hold contractual assessments revenues received pursuant to the Assessment Contracts. Moneys in the Fund shall be used to make payments on debt issued by or on behalf of the County, fund certain administrative costs of the Program, replenish the debt service reserve fund, if required, and repay funds advanced by the County. Amounts in the Fund may also be used to finance additional Improvements secured by contractual assessments and any other reasonable activity needed to advance the Program. Payment of the contractual assessments will be made pursuant to Assessment Contracts between the property owner and the County.

### *Maximum Aggregate Contractual Assessment*

The County is authorized to enter into up to \$1.0 billion in aggregate dollar amount of voluntary contractual assessments. The County will coordinate the timing and issuance of debt with the goal of providing the lowest possible interest rate to qualifying property owners and maintaining the long-term financial viability of the Program.

### *Administrative Costs/Application Fee*

The County will offer the Program as an additional County service that will help property owners achieve reductions on their energy bills and other environmental goals, while helping the County achieve its own environmental goals. The County will be responsible for:

- Development and operation of LACEP;
- Acquisition of LACEP financing;
- Overall reporting of Program status and goals, including reports to financing agencies, regulators, and stakeholders;
- Overall structure and enforcement of Program governance; and
- Management and administration of LACEP consultants needed to perform services under the Program.

Certain administrative costs are anticipated in connection with the aforementioned responsibilities. All or a portion of such administrative costs may be financed through the interest component of the contractual assessment. The Program may also assign direct fees or charges to property owners for certain services provided during the process of securing an Assessment Contract. The County will recover a portion of these initial administrative costs through a one-time application fee.

### Maximum Disbursement Amounts

The County will set a maximum disbursement amount for individual properties under the Assessment Contract. Where possible, the actual amount disbursed to a participating property owner pursuant to an Assessment Contract will equal the actual cost of Improvements. In the event that the final cost of Improvements exceeds the agreed upon maximum disbursement amount, the property owner will be solely responsible for the payment of excess costs incurred to complete the Improvements.

### Single and Multiple Disbursements

Most disbursements will be delivered to property owners in a single payment upon completion of the Improvements. However, upon Program Administrator approval, some projects may qualify for multiple disbursements, which will allow for one or more payments to be made prior to project completion.

### Assessment Interest Rate

The County will set a maximum interest rate for individual properties under the Assessment Contract. The final interest rate will be determined such that the total amount of contractual assessment payments (principal and interest) will be sufficient to repay the debt issued to finance the Improvements, pay the financing costs of such debt issuance, finance a debt service reserve fund with respect to such debt and fund eligible administrative costs so that the Program remains financially viable. The County Treasurer and Tax Collector, in conjunction with the Program Administrator, will determine individual contractual assessment interest rates. Under no circumstances will the interest rate exceed the maximum rate allowed by law.

### Annual Administrative Assessment; Consultation with County Auditor-Controller

LACEP reserves the right to charge an Annual Administrative Assessment to cover costs incurred by the County for the ordinary and necessary costs of administering the levy and collection of the contractual assessments and all other administrative costs and incidental expenses related to the debt to be issued. Separate from any application fee or administrative cost recovered through amounts paid on the contractual assessment interest rate, the Annual Administrative Assessment will be collected in the same manner as the contractual assessment and may be adjusted annually to reflect changes in costs. The County Auditor-Controller has been consulted regarding any fees resulting from the incorporation of the contractual assessments into the general taxes of the County on real property. It has been determined that any such fees shall be collected pursuant to the Annual Administrative Assessment.

### Assessment Term

The term of the contractual assessments will be no greater than the expected useful life of the Improvements for each individual Assessment Contract. In no event will the term of any contractual assessment exceed the maximum term allowed by law. The term of each contractual assessment will be set under the Assessment Contract.

### Assessment Collection and Default

The contractual assessments will be collected in the same manner and at the same time as the general property taxes of the County. The contractual assessments are subject to the same penalties, remedies, and lien priorities in the event of delinquency and default. If any contractual assessment becomes delinquent and property taxes remain unpaid, the County shall have the right to initiate foreclosure proceedings on the subject property. The LACEP foreclosure policy will be developed in connection with future financing arrangements and will take into consideration any required covenants associated with a bond issuance.

### *Rebates and Incentives*

Financing through the Program may coincide with current and future distributed generation renewable energy, energy efficiency and water efficiency financial incentives available from utility providers as well as local, State, federal, and other agencies. The value of expected rebates and incentives will be factored into the financing available to the property owner. The Program will advise, and may require that, participants apply for any and all applicable rebates and incentives available at the time of financing. References to rebates and financial incentives in this Report do not include income tax rebates.

### *Financing Process*

The process for property owners to receive financing through LACEP is designed to be helpful, transparent, and straightforward. Presented below are the general procedures for the application, funding, and repayment process:

- **Education.** Property owners may access a variety of resources to learn about the Program, the financing terms, and other details. These resources may include a Program website, service centers staffed to assist property owners, and information made available at community events.
- **Application.** Property owners may apply for a funding reservation from LACEP and pay a non-refundable application fee. Applications must include a proposed project (scope of work) and a contractor bid.
- **Review and Approval.** The Program Administrator will approve an application only after confirming that the applicant and proposed project satisfy the underwriting criteria and other Program requirements.
- **Reservation of Funds.** Once the application is approved, the Program Administrator and the property owner will enter into the Assessment Contract. At this point in time, a maximum disbursement amount, loan term, and maximum interest rate will be set. The property owner will also agree to the terms and conditions of the Assessment Contract. The Program Administrator will provide assessment information to the County and an assessment lien will be filed with the County Registrar-Recorder.
- **Installation.** The property owner will receive a notice to proceed with the Improvements. A qualified installer must complete the installation of authorized Improvements on the property within the required timeframe after receiving the notice. In some cases, the Program Administrator in his/her sole discretion may grant a time extension.
- **Evidence of Compliance/ Disbursement of Funds.** The County is not obligated to disburse funds unless and until each of the requirements set forth under the Assessment Contract are satisfied or waived by the Program Administrator. Upon satisfaction of the above, the Program Administrator will release funds to the property owner in the amount of the actual cost of Improvements, but not exceeding the maximum disbursement amount set forth in the Assessment Contract. At this time, the Program Administrator will notify the property owner of the actual interest rate and amount of the contractual assessment.
- **Repayment.** After the release of funds, the County will place the assessment on the property tax roll for the tax year immediately following the disbursement date. The property owner will be expected to pay the contractual assessment installments in the amounts and at the times specified in the Assessment Contract. Prepayment of the contractual assessment will be permitted, however, penalties may apply. Any applicable penalties resulting from prepayment will be set forth in the Assessment Contract.

### *Priority of Funding*

Applications from property owners for financing will be given priority based on the date on which the application is approved. If a request from a property owner for financing would cause LACEP to exceed the maximum amount of contractual assessments for the Program, then that application will be ineligible for financing. The Program Administrator shall retain the authority to grant exceptions to the priority status of individual applications.

### *Property Owner Financial Responsibilities*

The following types of costs are examples of those that will be the responsibility of the property owner and will not be financed through the Program:

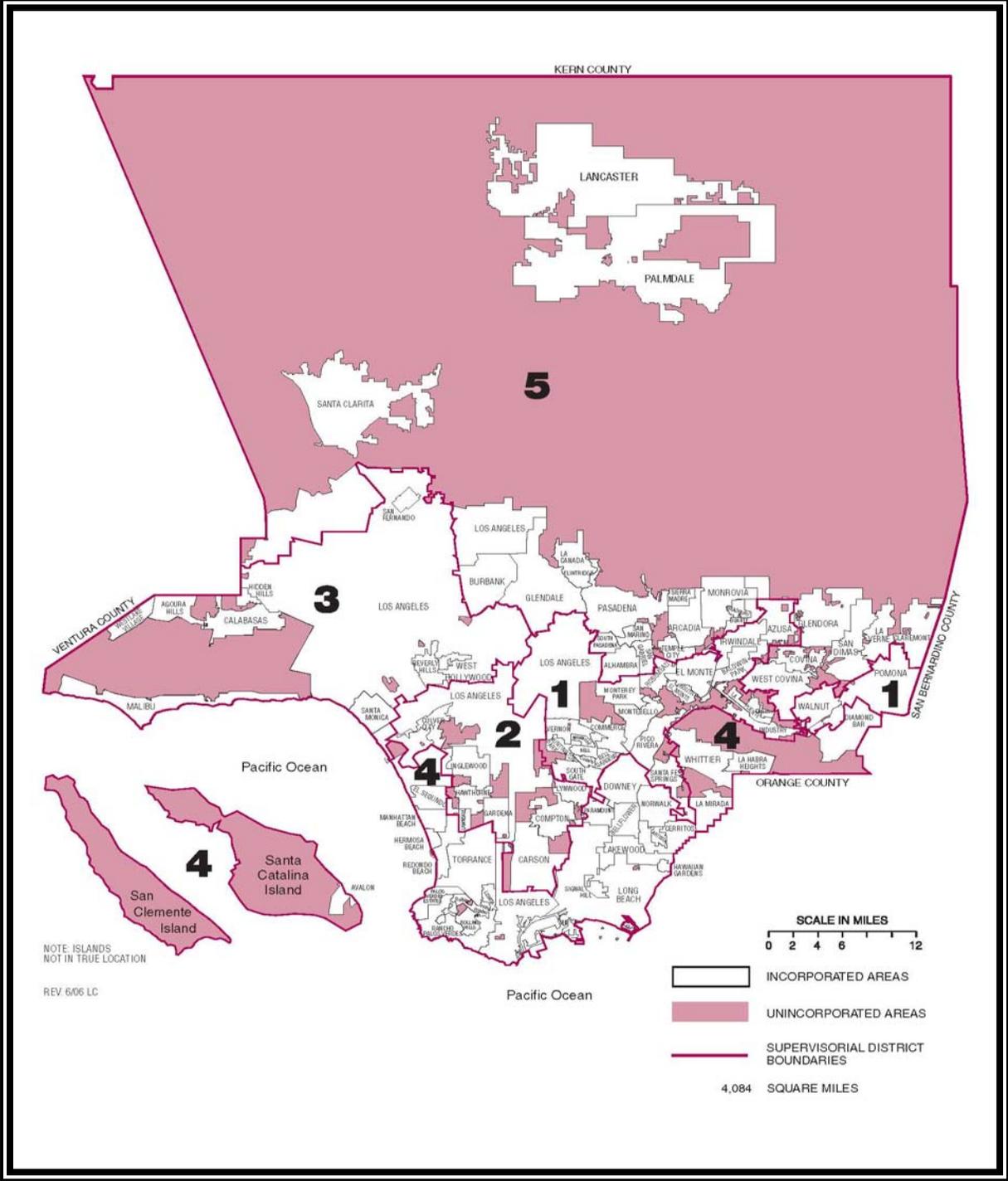
- Application fee;
- If applicable, title insurance and property insurance costs;
- Late payment fees;
- If applicable, costs associated with compliance with the California Environmental Quality Act; and
- Costs associated with repairs and maintenance of the Improvements.

## ***IV. CHANGES TO THE PROGRAM REPORT***

The Program Administrator may make changes to this Report that he/she reasonably determines are necessary to clarify its provisions. Any changes made to this Report that materially modify the LACEP shall only be made after approval by the Board of Supervisors.

The Program Administrator may modify the schedule of eligible Improvements attached as Appendix B and the draft Assessment Contract attached as Appendix C as deemed necessary or desirable to effectuate the intent of the Program.

### Appendix A: Area Map



## ***Appendix B: Eligible Improvements***

Eligible improvements will include, but are not limited to, the following types of Improvements, subject to approval by the Program Administrator:

### ***Energy Efficiency Improvements***

- Air sealing
- Duct sealing and weather stripping
- Attic, duct, floor, roof and wall insulation
- Hot water system insulation
- Fans (Bathroom, ceiling, whole house)
- Energy efficient pool pumps
- HVAC systems
- Programmable thermostats and energy management systems
- Light fixtures
- Energy Star cool roof
- Radiant barriers
- Windows, doors, skylights
- Window film

### ***Water Efficiency Improvements***

- Hot water heater
- On-demand water recirculation control pump
- High-efficiency toilets and urinals
- Showerheads and aerators
- Smart irrigation/ Water efficient landscaping
- Rainwater harvesting system
- Grey water system

### ***Distributed Generation Renewable Energy Improvements***

- Solar hot water heating systems
- Solar thermal installation
- Solar space heating
- Photovoltaic systems
- Wind energy systems
- Fuel cell power systems

## ***Appendix C: Draft Assessment Contract***

(See attached.)

**LOS ANGELES COUNTY ENERGY PROGRAM**

**ASSESSMENT CONTRACT**

This Assessment Contract (this “Contract”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the COUNTY OF LOS ANGELES, a political subdivision of the State of California (the “County”), and \_\_\_\_\_ and \_\_\_\_\_ (collectively, the “Owner”).

WHEREAS, the County has established the Los Angeles County Energy Program (“LACEP”) pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (the “Act”), in connection with which the County may levy assessments against developed properties in the County, with the free and willing consent of the owners of the properties, to finance the acquisition and construction on and installation in the assessed properties of certain qualifying renewable energy systems and energy and water efficiency improvements.

WHEREAS, the Owner has reviewed the Program participant handbook attached as Exhibit A hereto (the “Participant Handbook”) and submitted an application to participate in LACEP (the “Application”; together with Participant Handbook and this Contract, the “Contract Documents”) to finance the acquisition, construction and installation of the renewable energy systems, energy efficient improvements and/or water efficiency improvements described in Exhibit B attached hereto (the “Improvements”) on that certain real property of the Owner described in Exhibit C attached hereto (the “Property”) and the County has approved such Application.

WHEREAS, the County may fund LACEP through a number of financing mechanisms, including with proceeds of bonds to be issued by the County, with proceeds of loans derived from bonds issued by the Los Angeles County Public Works Financing Authority (the “Authority”) and from amounts to be advanced through available funds of the County.

WHEREAS, the County wishes to provide for the terms and conditions pursuant to which the Owner will participate in LACEP and pay assessments to finance the Improvements hereunder.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. **Financing Terms**

(a) Disbursement Amount; Maximum Disbursement Amount. Subject to the conditions set forth herein, the County agrees to disburse moneys to the Owner in the amount of the actual cost of the Improvements (the “Disbursement Amount”); provided the Disbursement

Amount shall not exceed the maximum amount set forth in Exhibit B hereto (the “Maximum Disbursement”). LACEP Program Administrator (the “Program Administrator”) shall determine the Disbursement Amount on the basis of the best available written evidence of the actual cost of the Improvements and in the exercise of the Program Administrator’s reasonable judgment. The Owner agrees to complete the Improvements. The Owner agrees to pay for and shall be solely responsible for the payment of all costs to complete the Improvements described in the Application which exceed the Maximum Disbursement.

(b) Repayment by Owner.

(i) Assessment. In consideration of the disbursement of the Disbursement Amount, the Owner shall pay to the County an amount equal to the Disbursement Amount, certain financing costs, including any capitalized LACEP administrative expenses, and the interest accrued thereon. Such amounts shall be repaid by the Owner to the County by the payment of an aggregate assessment levied against the Property pursuant to Section 5898.30 of the Streets and Highway Code of the State of California (the “Assessment”) without deduction or offset for any amounts the Owner may claim due to it by the County, all as set forth in Exhibit B attached hereto.

(ii) Interest on Assessment. Interest shall be payable in installments, computed on the basis of a 360-day year, and shall accrue on the unpaid Assessment from [the date of this contract<sup>1</sup>][the date any portion of the Disbursement Amount is disbursed to the Owner] at the rate determined by the Program Administrator in his/her sole discretion at the time of disbursement or final disbursement, as applicable, of the Disbursement Amount. The maximum interest rate applicable to the unpaid Assessment and the interest installments therefor are set forth in Exhibit B hereto. The Program Administrator will give notice to the Owner of the interest rate applicable to the unpaid Assessment and the related interest installments as soon as practicable after its determination, which notice will be substantially in the form attached as Exhibit D hereto (the “Notice of Interest Rate and Payment Schedule”).

(iii) Annual Administrative Assessment. The Owner shall pay to the County, without deduction or offset, an annual assessment levied against the Property to pay costs incurred by the County in connection with the administration and collection of the Assessment, the administration or registration of any associated bonds, securities or other financing arrangements, and the administration of any reserve fund or other related funds (the “Annual Administrative Assessment”). The Annual Administrative Assessment shall not exceed the amount set forth in Exhibit B hereto and may be changed from time to time by the Program Administrator, in his sole discretion, subject to the maximum Annual Administrative Assessment.

(iv) Financing Costs in the Event of Noncompletion. If the Owner fails to install the Improvements in compliance with LACEP requirements following execution of this Assessment Contract, the Owner shall pay for all expenses incurred by the County

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<sup>1</sup> In the case of a County financing with accrued interest.

or any of its agents in connection with levying or removing the assessments hereunder and financing the Improvements, including costs relating to the redemption of bonds issued to finance the Improvements.

(c) Prepayment. The Owner may prepay the Assessment in whole and in part by paying all or a part of the principal amount owing on the Assessment, plus the applicable prepayment premium set forth in Exhibit B hereto, and accrued interest. Interest on the Assessment may accrue until the next available redemption date for any bonds or other evidences of indebtedness, or other financial arrangements entered into by the County pursuant to LACEP which financed the Assessment in whole or in part. Such redemption date shall not exceed \_\_\_ (\_\_) days from the date of prepayment of the Assessment. The Owner shall notify the Program Administrator in writing of the Owner's determination to prepay the Assessment at least \_\_\_ (\_\_) business days prior to the date the Owner intends to prepay the Assessment.

(d) Term of Contract. The term of this Contract shall be as set forth in Exhibit B hereto, commencing upon the execution hereof and ending on the date the Assessment and any applicable penalties, costs, fees, and charges have been paid in full; provided, however, the estimated payment schedule may be adjusted as provided in this Section 1. The initial amount of each Assessment and Annual Administrative Assessment installment that will be levied is set forth in Exhibit B attached hereto. The amount of each Assessment and Annual Administrative Assessment installment that will be levied each year, as adjusted to reflect the applicable interest rate determined by the Program Administrator but excluding any penalties that may accrue, is set forth in Exhibit D attached hereto.

2. **Lien of Assessment and Annual Administrative Assessment; Special Benefit.**

(a) Lien Against Property. The execution of this Contract by the parties constitutes the levy of the Assessment and the Annual Administrative Assessment by the Board of Supervisors against the Property without any further action required by the parties. The Owner consents to the levy of the Assessment and the Annual Administrative Assessment, including each installment thereof and any interest and penalties that accrue with respect thereto, on and recordation of a lien against the Property and agrees that, upon the execution of this Contract by the parties, the Property shall be subject to the Assessment and the Annual Administrative Assessment in accordance with and pursuant to this Contract, the Act and applicable law.

(b) Notice of Assessment; Notice of Payment of Contractual Assessment Required. Upon execution of this Contract, the County will execute and cause to be recorded in the Office of the Registrar-Recorder/County Clerk a notice of assessment substantially in the form attached as Exhibit E hereto (the "Notice of Assessment") and a document entitled "Payment of Contractual Assessment Required" substantially in the form attached as Exhibit F hereto (the "Notice of Payment of Contractual Assessment Required"). Upon recordation of the Notice of Assessment in the Office of the Registrar-Recorder/County Clerk, the Assessment and the Annual Administrative Assessment, including each installment thereof and any interest and penalties that accrue with respect to the Assessment and the Annual Administrative Assessment, shall constitute a lien upon the Property until paid. The Notice of Assessment and Notice of Payment of Contractual Assessment Required, as recorded, shall initially reflect the Assessment as set forth in Exhibit B. Following the County's final disbursement of the Disbursement

Amount pursuant to Section 6 hereof, the Assessment shall equal the amount set forth in Exhibit D and the Notice of Assessment and Notice of Payment of Contractual Assessment Required will be supplemented accordingly.

(c) Priority of Lien. The lien of the Assessment and the Annual Administrative Assessment shall be coequal to and independent of the lien for general taxes and prior and superior to all liens, claims and encumbrances on or against the Property except (i) the lien for general taxes or ad valorem assessments in the nature of and collected as taxes levied by the State of California or any county, city, special district or other local agency, (ii) the lien of any special assessment or assessments the lien date of which is prior in time to the lien date of the Assessment and the Annual Administrative Assessment, (iii) easements constituting servitudes upon or burdens to the Property, (iv) water rights, the record title to which is held separately from the title to the Property and (v) restrictions of record.

(d) Special Benefit to Property.

(i) Acknowledgement. The Owner expressly acknowledges that the Improvements confer a special benefit to the Property in an amount at least equal to the Assessment.

(ii) Waiver of Provisions Other Than Those of the Act. The Owner expressly waives to the fullest extent permitted by law the notice, protest and hearing procedures and provisions of any applicable law other than the Act with respect to the levy and collection of the Assessment and the Annual Administrative Assessment, as described in Section 2 and Section 3, respectively, hereof.

### 3. Collection of Amounts Due; Failure to Pay.

(a) Collection through Property Tax Bill. Annual installments of the Assessment and the Annual Administrative Assessment shall be collected on the property tax bill pertaining to the Property. The annual proportion of the Assessment and the Annual Administrative Assessment coming due in any year shall be payable in the same manner, at the same time and in the same installments as the general taxes of the County on real property are payable, and the assessment installments shall be payable and become delinquent at the same times and the same proportionate amounts and shall bear the same penalties and interest after delinquency, and be subject to the same provisions for redemption and sale, as the general taxes on real property of the County.

(b) Failure to Pay. Failure to pay any installment of the Assessment and the Annual Administrative Assessment, including interest and penalties with respect thereto, shall result in the accrual of penalties and interest on the amounts due and may result in the foreclosure of the lien of the Assessment and the Annual Administrative Assessment, as described in Section 13(e) hereof and provided by law. Except as provided in Government Code Section 53936, the liens of the Assessment and the Annual Administrative Assessment are not subject to extinguishment by judicial foreclosure or the sale of the Property on account of the nonpayment of any taxes.

4. **Commencement and Completion of Improvements.**

(a) **Consent and Authorization.** Upon the availability of funding under LACEP, the Program Administrator will give to the Owner a notice to proceed in the form of Exhibit G hereto (the "Notice to Proceed"), which notice shall constitute consent and authorization pursuant to Section 5898.21 of the Act for the Owner to purchase directly the related equipment and materials for the Improvements and to contract directly for the construction on and/or installation in the Property of the Improvements. The Owner bears the risk of any costs of the Improvements incurred prior to receipt of the Notice to Proceed. The Owner may perform the construction and/or installation on the Property provided that the Owner is deemed a qualified installer by the Program Administrator in his/her sole discretion in accordance with the Participant Handbook.

(b) **Date of Completion of the Improvements.** Subject to Section 13(g) hereof, the Owner agrees to complete installation of the Improvements no later than \_\_\_ days after the date of the Notice to Proceed of this Contract. The Owner and the Program Administrator may agree to an extension of this completion date for good cause shown, but in no event shall the completion date be more than one year from the date of the Notice to Proceed.

5. **Use of Proceeds.**

The Owner shall use the Disbursement Amount for the sole purpose of paying for the reasonable costs and expenses of the Improvements on the Property, and in connection therewith the Owner shall comply with all requirements set forth in the Contract Documents.

6. **Conditions Precedent to Disbursement of Funds**

(a) **Conditions Precedent to Disbursement of Funds.** Notwithstanding anything to the contrary contained herein, the County shall have no obligation to disburse funds to the Owner unless and until each of the requirements set forth under "\_\_\_\_\_" of the Participant Handbook and the following conditions are satisfied, or any such requirement or condition is expressly waived by the Program Administrator:

- (i) With respect to the initial disbursement:
  - (A) The Program Administrator shall have received a written request to disburse the Disbursement Amount.
  - (B) The Owner has executed and delivered to the Program Administrator the Contract Documents and such other declarations, certifications, documents or instruments pertaining to the Disbursement Amount or the Improvements as the Program Administrator may require.
  - (C) The Owner will, within \_\_\_\_\_ (\_\_) days of presentation by the Program Administrator, execute any and all documents or instruments required by the Contract Documents in connection with the disbursement of funds to the Owner.

(D) If the Property is a commercial property, the Owner shall have provided all applicable lenders the Notice of Proposed Contractual Assessment set forth as Exhibit H to this Contract and received an executed copy of the Certificate of Lender set forth as Exhibit I to this contract. In addition, the Owner shall have received from the Program Administrator, at the expense of the Owner, a determination that the Improvements to be financed hereunder (a) are within one or more classes of projects exempt from the California Environmental Quality Act (commencing with Section 21000 et seq. of the California Public Resources Code, "CEQA") pursuant to Sections 15301, 15302 or 15303 of the California Public Resources Code, (b) are the appropriate subject of a negative declaration pursuant to CEQA, in which case a negative declaration to that effect will be adopted pursuant to Section 21080 et seq. of the California Public Resources Code and Section 15070 et seq. of the California Code of Regulations, or (c), is the appropriate subject of an environmental impact report pursuant to CEQA, in which case an environmental impact report shall be prepared and certified and amounts hereunder shall be disbursed only if the Improvements are subsequently approved in accordance with CEQA.

(ii) With respect to the second and final disbursement:

- (A) The Program Administrator shall have received a copy of a finalized permit issued by the building inspection department of the jurisdiction within which the Property is located, if applicable.
- (B) The Program Administrator shall have received a written certification from the Owner and the contractor(s) that installed or constructed the Improvements, if any, stating that the Improvements for which disbursement is requested is complete and setting forth the actual cost of the Improvements (exclusive of any cost attributable to labor performed by the Owner pursuant to the terms and conditions of this Contract and the other Contract Documents). Such certification shall be in form and substance acceptable to the Program Administrator.
- (C) If an inspection is required, an inspection of the Improvements and a determination by the applicable agency, authority or entity that the Improvements have been completed in full compliance with the requirements of applicable law or that any noncompliance has been waived.
- (D) No stop payment or mechanic's lien notices pertaining to the Improvements has been filed and remain in effect as of the date of disbursement of the Disbursement Amount.

(E) [If the Property is a commercial property, the Program Administrator shall have received a title insurance policy in form and substance acceptable to the Program Administrator in the Disbursement Amount and insuring the lien of the Assessment.]

(iii) With respect to each of disbursement:

(A) As of the date of disbursement of the Disbursement Amount the representations of the Owner contained in the Contract Documents are true and correct, and no Default (as defined in Section 13(a) below) shall have occurred and be continuing.

(B) The Program Administrator shall have received such other documents and instruments as the Program Administrator may require, including but not limited to, if applicable, the sworn statements of contractor(s) or the Owner, if construction and/or installation is performed by the Owner in his/her capacity as a qualified installer pursuant to the Contract Documents, and releases or waivers of lien, all in compliance with the requirements of applicable law.

(iv) If there shall be a single disbursement under this Assessment Contract, all conditions under (i) through (iii) shall be satisfied by the Owner or waived by the Program Administrator prior to disbursement.

(b) Disbursement by County. Upon satisfaction or waiver of the conditions described in paragraph (a), above, the County will disburse funds to the Owner [as soon as practicable.] The Owner expressly waives the 30-day payment period provided by Section 10403 of the Streets and Highways Code.

## 7. Representations and Warranties of the Owner.

For purposes of entering into this Contract, the County has relied upon the declarations, warranties and covenants of the Owner in this Contract and in the Application, which are incorporated into this Contract as if fully set forth herein. The Owner promises that each representation and warranty set forth herein is true, accurate and complete as of the date of this Contract. By accepting the disbursement, the Owner shall be deemed to have reaffirmed each and every representation and warranty made by the Owner in this Contract and in the Application as of the date of disbursement. If the Owner is comprised of the trustees of a trust, the following representations shall also pertain to the trustor(s) of the trust.

(a) Formation; Authority. If the Owner is anything other than a natural person, it has complied with all laws and regulations concerning its organization, its existence and the transaction of its business, and is in good standing in each State in which it conducts its business. The Owner is the owner of the Property and is authorized to execute, deliver and perform its obligations under the Contract Documents, and all other documents and instruments delivered by the Owner to the County in connection therewith. The Contract Documents have been duly executed and delivered by the Owner and are valid and binding upon and enforceable against the

Owner in accordance with their terms, and no consent or approval of any third party, which has not been previously obtained by the Owner is required for the Owner's execution thereof or the performance of its obligations contained therein.

(b) Compliance with Law. Neither the Owner nor the Property is in violation of, and the terms and provisions of the Contract Documents do not conflict with, any regulation or ordinance, any order of any court or governmental entity, or any building restrictions or governmental requirements affecting the Owner or the Property.

(c) No Violation. The terms and provisions of the Contract Documents, the execution and delivery of the Contract Documents by the Owner, and the performance by the Owner of its obligations contained in the Contract, will not and do not conflict with or result in a breach of or a default under any of the terms or provisions of any other agreement, contract, covenant or security instrument by which the Owner or the Property is bound.

(d) Other Information. All reports, documents, instruments, information and forms of evidence which have been delivered to the County in connection with the Owner's application for LACEP funding are accurate, correct and sufficiently complete to give the County true and accurate knowledge of their subject matter.

(e) Litigation. There is no litigation, tax claims, actions, proceedings, investigations or other disputes pending or threatened against the Owner or the Property which may impair the Owner's ability to perform its obligations hereunder, or which may impair the County's ability to levy and collect the Assessment and the Annual Administrative Assessment.

(f) No Event of Default. There is no event which is, or with notice or lapse of time or both would be, a Default under this Contract.

## 8. Covenants of the Owner.

The Owner agrees and covenants to each of the following:

(a) Installation and Maintenance of Improvements. The Owner shall, or shall cause its contractor(s) to, promptly commence the Improvements and diligently continue to completion in a good and workmanlike manner and in accordance with sound construction and installation practices. The Owner shall maintain the Improvements in good condition and repair.

(b) Reports. If the Disbursement Amount is disbursed in more than one installment, the Owner agrees, upon the request of the Program Administrator, to promptly deliver or cause to be promptly delivered to the Program Administrator a written status report of the Improvements, including the acquisition and installation thereof.

(c) Compliance with Law and Agreements. The Owner shall complete all Improvements, or cause the Improvements to be completed, in conformity with all applicable laws, including all applicable federal, state, and local occupation, safety and health laws, rules, regulations, standards, and recorded instruments, covenants or agreements affecting the Property. The Owner shall comply with and keep in effect all permits, licenses, and approvals required to complete installation of the Improvements.

(d) Completion of Work. If the Disbursement Amount is disbursed in more than one installment, subject to any acceptable excuse for failure to complete the Improvements pursuant to Section 13(g) hereof, the Owner shall complete the Improvements within \_\_\_\_\_ [time period] of the initial disbursement of the Disbursement Amount.

(e) Site Visits; Utility Records; Surveys. For purposes of examining the workmanship of the Improvements, observing the quality of the Improvements and otherwise evaluating LACEP, the Owner grants the County, its agents and representatives, including without limitation the Program Administrator, the right to enter and visit the Property at any reasonable time, after giving reasonable notice to the Owner. For purposes of examining savings derived from the Improvements and other satisfying the requirements relating to grant moneys used to fund LACEP, the Owner shall also allow the County to examine and copy records and other documents of the Owner which relate to the Improvements, including utility records of the Owner and execute any consents, waivers or similar documents required by utility providers in connection therewith through the term of this Contract. The Owner also agrees to participate in any and all surveys conducted in connection with LACEP. The County is under no duty to visit the Property, observe any aspects of the Improvements or examine any records, and the County shall not incur any obligation or liability by reason of not making any such visit or examination. Any site visit, observation or examination by the County shall be solely for the purposes of protecting the County's rights under the Contract Documents.

(f) Protection Against Lien Claims. The Owner shall promptly pay or otherwise discharge any claims and liens for labor done and materials and services furnished to the Property in connection with the Improvements. The Owner shall have the right to contest in good faith any claim or lien, provided that it does so diligently and without delay in completing the Improvements.

(g) Notice to Successors in Interest. The Owner agrees to provide written notice to any subsequent purchaser of the Property that the Property is subject to an LACEP assessment lien, and to provide any subsequent purchaser a copy of this Contract.

(h) Insurance. [If the Maximum Disbursement exceeds \$\_\_\_\_\_,] the Owner shall provide, maintain and keep in force at all times until the Improvements are completed, builder's all risk property damage insurance on the Property, with a policy limit equal to the amount of the Maximum Disbursement.

(i) Notices. The Owner shall promptly notify the County in writing of any Default under this Contract, or any event which, with notice or lapse of time or both, would constitute a Default hereunder.

## 9. Mechanic's Lien and Stop Notices.

In the event of the filing of a stop notice or the recording of a mechanic's lien pursuant to applicable law of the State of California and relating to the Improvements, the Program Administrator may refuse to disburse any funds to the Owner, and, in the event the Owner fails to furnish the Program Administrator a bond causing such notice or lien to be released within \_\_\_ (\_\_) days of notice from the Program Administrator to do so, such failure shall at the option of

the County constitute a default under the terms of this Contract. The Owner shall promptly deliver to the Program Administrator copies of all such notices or liens.

10. **Responsibilities of the Owner; Indemnification.**

(a) **Financing by County; No Responsibility for Improvements.** The Owner acknowledges that the County has established LACEP solely for the purpose of assisting the owners of property in the County with the financing of the acquisition, construction, and installation of qualifying renewable energy systems and energy and water efficiency improvements. LACEP is a financing program only. None of the County, the Authority (if bonds are issued by the Authority), their officials, agents, employees, attorneys and representatives, the Program Administrator, or LACEP staff is responsible for selection, management or supervision of the Improvements or of the Improvements' performance.

(b) **Indemnification.** The Owner shall indemnify, defend, protect, and hold harmless the County, the Authority (if bonds are issued by the Authority) and any and all officials, agents, employees, attorneys and representatives of the County and the Authority (collectively, the "Indemnified Parties") and, if the Property is located in an incorporated area, such incorporated city and any and all officials, agents, employees, attorneys and representatives of such city, (the "City Parties"), from and against all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorneys' fees) and any demands of any nature whatsoever related directly or indirectly to, or arising out of or in connection with, (i) the Contract Documents, (ii) disbursement of the Disbursement Amount, (iii) the Improvements, (iv) any breach or Default by the Owner under the Contract Documents, (v) the levy and collection of the Assessment and the Annual Administrative Assessment, (vi) the imposition of the lien of the Assessment and the Annual Administrative Assessment, (vii) any breach or failure of the Owner or its contractor(s) or agents to comply with all applicable laws, including all applicable federal, state and local occupation, safety and health laws, rules, regulations and standards, in connection with the acquisition, installation or completion of the Improvements, and (viii) any other fact, circumstance or event related to the County's payment of the Disbursement Amount to the Owner or the Owner's performance of its obligations under the Contract Documents (collectively, the "Liabilities"), regardless of whether such Liabilities shall accrue or are discovered before or after the Disbursement.

(c) **Survival of Indemnification.** The indemnity obligations described in Section 10(b) shall survive the disbursement of funds to the Owner, the payment of the Assessment in full, the transfer or sale of the Property by the Owner and the termination of this Contract.

11. **Waiver of Claims.**

For and in consideration of the County's execution and delivery of this Contract, the Owner, for itself and for its successors-in-interest to the Property and for any one claiming by, through, or under the Owner, hereby waives the right to recover from and fully and irrevocably releases the Indemnified Parties and, if the Property is located in an incorporated area, the City Parties, from any and all claims, obligations, liabilities, causes of action, or damages, including attorneys' fees and court costs, that the Owner may now have or hereafter acquire against any of

the Indemnified Parties and the City Parties and accruing from or related to (i) the Contract Documents, (ii) the disbursement of any of the Disbursement Amount, including any amounts advanced hereunder, (iii) the levy and collection of the Assessment and the Annual Administrative Assessment, (iv) the imposition of the lien of the Assessment, (v) the issuance and sale of any bonds or other evidences of indebtedness, or other financial arrangements entered into by the County pursuant to LACEP, (vi) the performance of the Improvements, (vii) the Improvements, (viii) any damage to or diminution in value of the Property that may result from construction or installation of the Improvements, (ix) any personal injury or death that may result from the construction or installation of the Improvements, (x) the selection of manufacturer(s), dealer(s), supplier(s), contractor(s) and/or installer(s), and their action or inaction with respect to the Improvements, (xi) the merchantability and fitness for any particular purpose, use or application of the Improvements, (xii) the amount of energy savings resulting from the Improvements, (xiii) the workmanship of any third parties, and (xiv) any other matter with respect to LACEP. This release includes claims, obligations, liabilities, causes of action, and damages of which the Owner is not presently aware or which the Owner does not suspect to exist which, if known by the Owner, would materially affect the Owner's release of the Indemnified Parties and the City Parties.

OWNER HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 ("SECTION 1542"), WHICH IS SET FORTH BELOW:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

BY INITIALING BELOW, OWNER HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES.

Owner's Initials: \_\_\_\_\_

The waivers and releases by the Owner contained in this Section 11 shall survive the disbursement of the Disbursement Amount, the payment of the Assessment in full, the transfer or sale of the Property by the Owner, and the termination of this Contract.

12. **Further Assurances.**

The Owner shall execute any further documents or instruments consistent with the terms of this Contract, including documents and instruments in recordable form, as the County shall from time to time find necessary or appropriate to effectuate its purposes in entering into this Contract and disbursing funds to the Owner.

13. **Events of Default.**

(a) **Default.** Subject to the further provisions of this Section 13, the failure of any of the Owner’s representations or warranties to be correct in all material respects, or the failure or delay by the Owner to perform any of its obligations under the terms or provisions of the Contract Documents, shall constitute a default hereunder (“Default”).

(b) **Notice of Default.** Upon the occurrence of a Default, prior to exercising any remedies under the Contract Documents or the Act, the County shall give written notice of default to the Owner. Delay in giving such notice shall not constitute a waiver of any Default. The Owner must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence, but in any event, within the time set forth herein.

(c) **Cure Period for Monetary Default.** If the Owner fails to timely pay any installment of the Assessment or the Annual Administrative Assessment, the Owner shall have a period of \_\_\_\_\_ (\_\_) days after notice is given pursuant to paragraph (b) above within which to cure such default. Following such \_\_\_\_\_ (\_\_) day period, the County in its sole discretion may exercise any and all of its available remedies, including its right to foreclose the lien of the Assessment or the Annual Administrative Assessment pursuant to applicable law.

(d) **Cure Period for Non-Monetary Default.** If a non-monetary Default occurs and such Default is reasonably capable of being cured within \_\_\_\_\_ (\_\_) days, the Owner shall have such period to effect a cure prior to exercise of remedies by the County under the Contract Documents or the Act. If the Default is such that it is reasonably capable of being cured but not within such \_\_\_\_\_ (\_\_) day period and the Owner (i) initiates corrective action within such \_\_\_\_\_ (\_\_) day period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the County in its sole discretion may elect to grant the Owner such additional time as is reasonably necessary to cure the Default prior to exercise of any remedies by the County. The foregoing notwithstanding, in no event shall the County be precluded from exercising any of its remedies if the Default is reasonably expected to result in the foreclosure or forfeiture of the Property, or if the Default is not cured within \_\_\_\_\_ (\_\_) days after the first notice of Default is given.

(e) **Remedies Upon Default.** Subject to the provisions of paragraphs (b), (c) and (d) above, if any Default occurs the County may exercise any or all of the rights and remedies available to it under applicable law, at equity, or as otherwise provided herein. If no disbursement has occurred hereunder, the County may elect to terminate this Contract and, except as otherwise expressly provided herein, the parties have no further obligations or rights hereunder. If the Disbursement Amount has been disbursed in whole or in part, the County may terminate its obligations to make any further disbursement of the Disbursement Amount and exercise any or all of the rights and remedies available to it under this Contract and applicable law. As a cumulative remedy, if any installment of the Assessment and the Annual Administrative Assessment, together with any penalties, costs, fees, and other charges, accruing under applicable taxation provisions are not paid when due, the Board of Supervisors or its designee may order that the same be collected by an action brought in a court of competent jurisdiction to foreclose the lien of the Assessment and the Annual Administrative Assessment to

the extent permitted, and in the manner provided by, applicable law. Any and all costs and expenses incurred by the County in pursuing its remedies hereunder shall be additional indebtedness of the Owner to the County.

(f) Remedies Cumulative. Except as otherwise expressly stated in this Contract or as otherwise provided by applicable law, the rights and remedies of the County are cumulative, and the exercise of one or more of such rights or remedies shall not preclude the exercise by the County, at the same time or different times, of any other rights or remedies for the same Default or any other Default. No failure or delay by the County in asserting any of its rights and remedies as to any Default shall operate as a waiver of any Default or of any such rights or remedies, or deprive the County of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

(g) Force Majeure. Performance of the covenants and conditions imposed upon the Owner hereunder with respect to the commencement and completion of the Improvements shall be excused while and to the extent that, the Owner, through no fault or negligence of its own, is prevented from complying therewith by war, riots, strikes, lockouts, action of the elements, accidents, or acts of God beyond the reasonable control of the Owner; provided, however, that as soon as the cause or event preventing compliance is removed or ceases to exist the obligations shall be restored to full force and effect and the Owner shall immediately resume installation of the Improvements.

14. Severability.

Each and every provision of this Contract is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Contract or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Contract, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Contract shall, be valid and shall be enforced to the extent permitted by law.

15. Notices.

All notices and demands shall be given in writing by first class mail, postage prepaid, or by personal delivery (by recognized courier service). Notices shall be considered given upon the earlier of (a) personal delivery or (b) \_\_ (\_\_) business days following deposit in the United States mail, postage prepaid. Notices shall be addressed as provided below for the respective party; provided that if any party gives notice in writing of a change of name or address, notices to such party shall thereafter be given as demanded in that notice:

To the County: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: Program Administrator

To the Owner: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Attention: \_\_\_\_\_

Notwithstanding anything set forth above, after disbursement of funds to the Owner, all notices regarding the assessment shall be sent only as provided by the laws of the State of California.

16. **No Waiver.**

No disbursement of the Disbursement Amount based upon inadequate or incorrect information shall constitute a waiver of the right of the County to receive a refund thereof from the Owner. No disbursement of any portion of the Disbursement Amount shall constitute a waiver of any conditions to the County's obligation to make further disbursements. No waiver by the County of any failure by the Owner to comply with any provision of this Contract shall in any way preclude the County from thereafter declaring such failure by the Owner a Default hereunder or be deemed a waiver of any other or subsequent Default.

17. **Governing Law.**

This Contract shall be construed and governed in accordance with the laws of the State of California.

18. **Assignment by the County.**

The County, at its option, may (i) assign any or all of its rights and obligations under this Contract, and (ii) pledge and assign its right to receive the Assessment and the Annual Administrative Assessment, and any other payments due to the County hereunder, without obtaining the consent of the Owner.

19. **Assignment by Owner Prohibited.**

The Owner may sell, transfer, rent or otherwise dispose of all or a portion of its interests in the Property so long as the Assessment and the Annual Administrative Assessment, including each installment thereof and the interest and penalties thereon, shall constitute a lien against the Property until the same is paid in full. All other dispositions of all or a portion of the Owner's rights and obligations under this Contract are subject to the prior express written consent of the County, which consent may be granted or withheld in the sole and absolute discretion of the County.

20. **Carbon Credits.**

The Owner agrees that any carbon credits attributable to the Improvements shall be held on behalf of LACEP by the County.

21. **Entire Agreement; Amendment.**

This Contract, together with the other Contract Documents, is the entire agreement between the parties. Any other agreement related to the Improvements, and any amendment to this Contract, must be signed in writing by both parties.

22. **Natural Persons.**

If the Owner of the Property consists of more than one natural person, the obligations hereunder of all the owners shall be joint and several.

23. **Counterparts.**

This Contract may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

24. **Special Termination.**

Notwithstanding anything to the contrary contained herein, this Contract shall terminate and be of no further force or effect if the Owner has submitted to the Program Administrator a notice of its decision to cancel this transaction in the form of the Notice of Cancellation attached as Exhibit J hereto, which notice shall be delivered to the County pursuant to Section 15 hereof no less than \_\_\_\_\_ ( ) days prior to the disbursement of the Disbursement Amount.

25. **No Third Party Beneficiary Rights.**

This Contract is entered into for the sole benefit of the Owner and the County and, subject to the provisions of Sections 10, 11, 12 and 19, no other parties are intended to be direct or incidental beneficiaries of this Contract and no third party shall have any right in, under or to this Contract.

IN WITNESS WHEREOF, the Owner and the County have entered into this Contract as of the date and year first above written.

**THE OWNER:**

\_\_\_\_\_

Date of Execution by the Owner:

\_\_\_\_\_, 20\_\_\_\_

**THE COUNTY:**

**COUNTY OF LOS ANGELES, CALIFORNIA**

\_\_\_\_\_

Name:

Title: \_\_\_\_\_



**EXHIBIT A**  
**PARTICIPANT HANDBOOK**

**[To Come]**

**EXHIBIT B**  
**CERTAIN FINANCING TERMS**

Maximum Disbursement Amount:

Contract Term:

Maximum Interest Rate: \_\_\_ Percent (\_\_\_%) per annum.

Financing Costs in the Event of Noncompletion:

Annual Administrative Assessment<sup>(1)</sup>:

Prepayment Premium: From \_\_\_\_\_ to \_\_\_\_\_, a prepayment premium of \_\_\_ percent (\_\_\_%)

From \_\_\_\_\_ to \_\_\_\_\_, a prepayment premium of \_\_\_ percent (\_\_\_%)

After \_\_\_\_\_, a prepayment premium of \_\_\_ percent (\_\_\_%)

Improvements:

Estimated Payment Schedule:

Year <sup>(2)</sup>	Assessment			Maximum	Total
	Disbursement Amount <sup>(3)</sup>	Financing Costs <sup>(4)</sup>	Interest	Annual Administrative Assessment <sup>(5)</sup>	

<sup>(1)</sup> Based on the Maximum Annual Administrative Assessment established for LACEP, which amount may be adjusted from time to time by the Program Administrator, provided that the adjusted amount does not exceed the Maximum Annual Administrative Assessment.

<sup>(2)</sup> If funds are disbursed to the Owner before \_\_\_\_\_, the assessment will appear on the property tax bill for the same tax year. If funds are disbursed after \_\_\_\_\_, the assessment will appear on the property tax bill for the following tax year.

<sup>(3)</sup> Based on Maximum Disbursement. Subject to revision by the Program Administrator following the disbursement of the Disbursement Amount, if necessary, pursuant to the Contract to reflect the Disbursement Amount.

<sup>(4)</sup> Includes capitalized LACEP administrative expenses.

<sup>(5)</sup> Based on the Maximum Annual Administrative Assessment established for LACEP, which amount may be adjusted from time to time by the Program Administrator, provided that the adjusted amount does not exceed the Maximum Annual Administrative Assessment.

**EXHIBIT C**  
**DESCRIPTION OF THE PROPERTY**

**EXHIBIT D**

**LOS ANGELES COUNTY ENERGY PROGRAM  
NOTICE OF INTEREST AND PAYMENT SCHEDULE**

Owner: \_\_\_\_\_ (the “Owner”)

Address: \_\_\_\_\_  
\_\_\_\_\_ (the “Property”)

Assessor’s Parcel Number: \_\_\_\_\_

LACEP Loan Number: \_\_\_\_\_

Pursuant to Section 1(b)(ii) of that certain Assessment Contract (the “Assessment Contract”) executed by and between you, as Owner of the Property, and the County in connection with the Los Angeles County Energy Program, you are hereby notified that the interest rate applicable to the unpaid Assessment (as defined in the Assessment Contract) is \_\_\_\_%. The schedule of Assessment Installments, interest thereon and the Maximum Annual Administrative Assessment with respect to the referenced property is set forth below:

Year <sup>(1)</sup>	Assessment			Maximum	Total
	Disbursement Amount	Financing Costs <sup>(2)</sup>	Interest	Annual Administrative Assessment <sup>(3)</sup>	

<sup>(1)</sup> If funds are disbursed to the Owner before \_\_\_\_\_, the assessment will appear on the property tax bill for the same tax year. If funds are disbursed \_\_\_\_\_, the assessment will appear on the property tax bill for the following tax year.

<sup>(2)</sup> Includes capitalized LACEP administrative expenses.

<sup>(3)</sup> Based on the Maximum Annual Administrative Assessment established for LACEP, which amount may be adjusted from time to time by the Program Administrator, provided that the adjusted amount does not exceed the Maximum Annual Administrative Assessment.

The Notice of Assessment of record with the Office of the Registrar-Recorder/County Clerk of the County of Los Angeles will be amended to reflect the foregoing payment schedule.

Program Administrator,  
Los Angeles County Energy Program

**EXHIBIT E**

**NOTICE OF ASSESSMENT**

WHEN RECORDED RETURN TO

County of Los Angeles  
Treasurer and Tax Collector  
Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 437  
Los Angeles, California 90012  
Attention: Los Angeles County Energy Program  
– Program Administrator

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**NOTICE OF ASSESSMENT**

Pursuant to the requirements of Section 5898.32 of the Streets and Highways Code of the State of California, the undersigned Clerk of the Board of Supervisors (the “Board of Supervisors”) of the County of Los Angeles, a political subdivision of the State of California (the “County”), hereby gives notice that contractual assessments relating to that certain real property described in Appendix A hereto (the “Property”), in the amounts set forth in Appendix B hereto, were recorded in the Office of the Registrar-Recorder/County Clerk of the County, as provided for in said Section 5898.32.

Pursuant to that certain Assessment Contract (the “Assessment Contract”) by and between the County and the owner of the Property named herein in connection with the Los Angeles County Energy Program, the several assessments assessed on the Property set forth in Appendix B hereto became a lien upon the Property and the Property became subject to the assessment in accordance pursuant to the Assessment Contract, the Act and applicable law upon the execution of such Assessment Contract.

In addition to the assessment to pay the costs and expenses of the improvements to be acquired, the Property is subject to a separate and additional assessment, as set forth in Appendix B hereto, to be levied annually to pay for costs not otherwise reimbursed which will result from the administration and collection of assessments or from the administration or registration of any associated bonds and reserve or related funds.

Reference is made to the Assessment Contract for the amount of any final and adjusted assessments, including any annual assessment as levied for administrative costs or maintenance, as applicable.

Included in Appendix A hereto is the name(s) of the owner of record of the Property, which is also the assessed owner of the Property as it appears on the latest secured assessment roll, all as required pursuant to Section 27288.1 of the Government Code of the State of California.

Dated: \_\_\_\_\_

Clerk of the Board of Supervisors of the  
County of Los Angeles

By: \_\_\_\_\_  
Deputy

**Appendix A to Notice of Assessment**

**DESCRIPTION OF THE PROPERTY**

**Appendix B to the Notice of Assessment**

Name(s) of Owner of the Property: \_\_\_\_\_

Assessment Amount: \_\_\_\_\_

Annual Administrative Assessment Amount: \_\_\_\_\_

**EXHIBIT F**

**Payment of Contractual Assessment Required**

Pursuant to the requirements of Section 5898.24(d) of the Streets and Highways Code of the State of California, the Board of Supervisors (the “Board of Supervisors”) of the County of Los Angeles, a political subdivision of the State of California (the “County”), hereby gives notice that the real property described in Appendix A hereto (the “Property”) is subject to a contractual assessment that is required to be paid in accordance with that certain Assessment Contract (the “Assessment Contract”) by and between the owner of the Property and the County in connection with the Los Angeles County Energy Program. Certain information regarding the contractual assessment assessed on the Property is set forth below.

- (1) The names of all current owners of the real property subject to the contractual assessment:

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

- (2) Legal description of the Property: See Exhibit Appendix A attached hereto and incorporated herein by this reference.

- (3) Assessor’s parcel number for the Property:\_\_\_\_\_.

- (4) The annual amount of the contractual assessment:\_\_\_\_\_.

- (5) The contractual assessment referenced (4) above expires on the date such contractual assessment and any applicable penalties, costs, fees, and charges, including the Annual Administrative Assessment (as defined in the Assessment Contract), have been paid in full.

- (6) Funds from the contractual assessment were used to finance the acquisition and construction on and installation in the Property of certain qualifying renewable energy systems and energy and water efficiency improvements, as further described in the Assessment Contract.

- (7) Funds from the contractual assessment should be paid to the following:

[Name of entity to which contractual assessments should be paid]  
[Address of entity]  
[Contact person]<sup>2</sup>

<sup>2</sup> Section 5898.24(d)(2)(E) of the Act requires the document to include “the entity to which funds from the contractual assessment will be paid and specific contact information for that entity”.

Date: \_\_\_\_\_

Treasurer and Tax Collector of the  
County of Los Angeles [or Entity to which  
Contractual Assessments will be paid]

By: \_\_\_\_\_<sup>3</sup>  
Name:  
Title:

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<sup>3</sup> Section 5898.24(d)(2)(F) of the Act requires the document to include “the signature of the authorized representative of the legislative body to which funds from the contractual assessment will be paid.”

**Appendix A to Notice of Payment of Contractual Assessment Required**

**DESCRIPTION OF THE PROPERTY**

**EXHIBIT G**

**LOS ANGELES COUNTY ENERGY PROGRAM  
NOTICE TO PROCEED**

Date: \_\_\_\_\_

Owner: \_\_\_\_\_ (the "Owner")

Address: \_\_\_\_\_  
\_\_\_\_\_ (the "Property")

Assessor's Parcel Number: \_\_\_\_\_

LACEP Loan Number: \_\_\_\_\_

Pursuant to Section 4(a) of that certain Assessment Contract (the "Assessment Contract") executed by and between you, as Owner of the Property, and the County in connection with the Los Angeles County Energy Program, you are hereby given notice to proceed (this "Notice to Proceed") with acquisition, construction and installation of the Improvements and, upon completion of the Improvements, submit a request for funding to LACEP. This Notice to Proceed constitutes consent and authorization pursuant to Section 5898.21 of the Act for the Owner to purchase directly the related equipment and materials for the Improvements and to contract directly for the construction on and/or installation in the Property of the Improvements. The Owner must complete installation of the Improvements no later than \_\_ days after the date of this Notice to Proceed, provided that the Owner and the Program Administrator may agree to an extension of this completion date for good cause shown pursuant to Section 4(b) and Section 13(g) of the Assessment Contract, but in no event shall the completion date be more than one year from the date of this Notice to Proceed. Disbursement of any amounts pursuant to the Assessment Contract is subject to satisfaction of the terms and conditions thereof.

Program Administrator,  
Los Angeles County Energy Program

**EXHIBIT H**

**NOTICE OF PROPOSED CONTRACTUAL ASSESSMENT  
(Commercial Property Owner)**

**Notice Date:** \_\_\_\_\_

**Lender Address:** \_\_\_\_\_

**Property/Loan Information:**

**Owner:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**APN:** \_\_\_\_\_

**Loan Number(s):** \_\_\_\_\_

To Whom It May Concern:

The undersigned (the “Owner”) is the owner of a certain real property located at the above-referenced address (the “Property”). You are the lender (the “Lender”) with respect to the above-referenced (the “Loan”) that is secured by a lien on the Property.

The Owner is sending this Notice of Proposed Contractual Assessment to Lender to (i) provide notice of the Owner’s proposed participation in the Los Angeles County Energy Program (“LACEP”), (ii) request confirmation from the Lender that the levy of the contractual assessment pursuant to the herein described Assessment Contract will not trigger an event of default or the exercise of any remedies under the Loan documents, and (iii) provide notice that the contractual assessment (including any penalties and interest) will be secured by a statutory lien on the Property that is senior to the lien securing the Loan.

Background. The County of Los Angeles, a political subdivision of the State of California (the “County”) has established LACEP to help finance the acquisition and construction on and installation in the assessed properties, including the Property, of certain qualifying renewable energy systems and energy and water efficiency improvements (the “Improvements”) pursuant to Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California (“Contractual Assessment Law”).

In accordance with Contractual Assessment Law, the County will levy a contractual assessment to finance the installation of the Improvements on certain property with the agreement of the applicable property owner pursuant to the terms of an assessment contract (the “Assessment Contract”) between such property owner and the County. Pursuant to Section 5898.30 of Contractual Assessment Law, the contractual assessment (including any penalties and interest) is collected on the property tax bill and is secured by a lien on the applicable property

that is (i) senior to all private liens, including private liens that existed prior to levy of the contractual assessment and (ii) cannot be subordinated to the private liens.

Information regarding the purpose and method of administration of the assessments under LACEP can be found at \_\_\_\_\_ [website].

Participation in LACEP. The Owner has applied to participate in LACEP and intends to finance installation on the Property of the Improvements set forth on Exhibit A hereto. The contractual assessment to be levied on the Property (the "Contractual Assessment") pursuant to the Assessment Contract and the related payment terms are proposed to consist of the following:

Principal amount: \$ \_\_\_\_\_  
Estimated interest rate: \_\_\_\_\_ %  
Term of repayment period: \_\_\_\_\_  
Annual administrative component: \$ \_\_\_\_\_  
Total estimated annual installment: \$ \_\_\_\_\_

Lender Approval. Please acknowledge that participation of the Property in LACEP is acceptable to the Lender by executing the attached Certificate of Lender and returning it to the undersigned at your earliest convenience.

Very truly yours,

BY: \_\_\_\_\_  
(Signature)

OWNER  
NAME: \_\_\_\_\_

MAILING ADDRESS (if different than  
Property address): \_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT I**

**CERTIFICATE OF LENDER  
(Commercial Property Owner)**

**Property/Loan Information**

**Owner:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**APN:** \_\_\_\_\_

**Loan:** \_\_\_\_\_

In connection with the above-referenced loan (the “Loan”) relating to the above-referenced property (the “Property”) by the herein referenced lender (the “Lender”), the undersigned hereby certifies, acknowledges, confirms and agrees as follows:

- (1) He/she is duly authorized to execute this Certificate on behalf of the Lender.
- (2) The Lender is in receipt of written notice (the “Notice”) from the owner of the Property (the “Owner”) that Owner intends to finance installation on the Property of certain renewable energy, energy efficiency and/or water efficiency improvements that will be permanently fixed to the Property (the “Improvements”) by participating in the Los Angeles County Energy Program sponsored by the County of Los Angeles, a political subdivision of the State of California (the “County”).
- (3) As a result of an Assessment Contract between the County and the Owner (the “Assessment Contract”) and pursuant to Chapter 29 of Part 3 of Division 7 of the Streets and Highways Code of the State of California, the Contractual Assessment described in the Notice will be levied on the Property and the Contractual Assessment (including any penalties and interest) will be secured by a statutory lien that is senior to the lien securing the Loan.
- (4) The Lender consents to the levy of the Contractual Assessment pursuant to the Assessment Contract.
- (5) The Lender agrees that the levy of the Contractual Assessment will not constitute an event of default or the exercise of any remedies under the documents relating to the Loan.

The Lender further acknowledges that the Owner and the County will rely on this Certificate in connection with the disposition and administration of the Assessment Contract and the Los Angeles County Energy Program.

[LENDER]

By: \_\_\_\_\_

Name:

Title:

Date:

**EXHIBIT J**

**LOS ANGELES COUNTY ENERGY PROGRAM  
NOTICE OF CANCELLATION**

\_\_\_\_\_ [and \_\_\_\_\_] are the owner[s] of record ([collectively,] the “Owner”) of that certain real property located at \_\_\_\_\_ located in the County of Los Angeles, California. The Owner previously executed that certain Assessment Contract (the “Assessment Contract”) with the County of Los Angeles (the “County”) in connection with the Los Angeles County Energy Program (“LACEP”). Pursuant to the Assessment Contract, Owner hereby notifies the LACEP Program Administrator in accordance with Sections 15 and 24 of the Assessment Contract no less than \_\_\_\_\_ (\_\_) days prior to the disbursement of the Disbursement Amount that the Owner has determined to cancel the transaction described in the Assessment Contract. Accordingly, the Contract shall terminate and be of no further force or effect, except that the Owner agrees to pay amounts due, if any, pursuant to Section 1(b)(iv) of the Assessment Contract relating to financing costs in the event of the improvements are not completed.

Dated: \_\_\_\_\_

[OWNER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_

A RESOLUTION OF THE BOARD OF SUPERVISORS  
AUTHORIZING THE ESTABLISHMENT OF A SPECIAL  
FUND FOR THE LOS ANGELES COUNTY ENERGY  
PROGRAM, THE ISSUANCE AND SALE OF BONDS AND  
THE EXECUTION AND DELIVERY OF CERTAIN  
DOCUMENTS IN CONNECTION WITH THE LOS ANGELES  
COUNTY ENERGY PROGRAM, AND AUTHORIZING A  
VALIDATION ACTION AND CERTAIN ACTIONS RELATED  
THERE TO

WHEREAS, Chapter 29 of Part 3 of Division 7 of the Streets and Highways Code of the State of California (the “Contractual Assessment Law”) authorizes counties to assist free and willing property owners in financing the installation of distributed generation renewable energy sources and energy and water efficiency improvements (the “Improvements”) that are permanently fixed to residential, commercial, industrial or other real property through a contractual assessment program; and

WHEREAS, the Board of Supervisors (the “Board of Supervisors”) of the County of Los Angeles, a political subdivision of the State of California (the “County”), previously approved a resolution (the “Resolution of Intention”) declaring its intention to order the implementation of a contractual assessment program to finance Improvements pursuant to the Contractual Assessment Law; and

WHEREAS, following notice duly given and a hearing in accordance with applicable law, the Board of Supervisors approved a resolution (the “Resolution Establishing the LACEP”) which, among other things, authorized the establishment of the Los Angeles County Energy Program (the “LACEP”) to finance the acquisition, construction and installation of the Improvements on properties in the County through the use of contractual assessments pursuant to the Contractual Assessment Law; and

WHEREAS, pursuant to LACEP, the County will enter into contractual assessment agreements (each, an “Assessment Contract”) with free and willing property owners (the “Property Owners”) pursuant to which the County will assist in financing the acquisition, construction and installation of Improvements on or in such owners’ respective properties and levy contractual assessments (each, an “Assessment”) on the applicable properties in the amounts set forth in the Assessment Contracts; and

WHEREAS, the County desires to finance the disbursement of amounts pursuant to the Assessment Contracts through the issuance of contractual assessment limited obligation improvement bonds (the “County Assessment Bonds”) from time to time in one or more series under and pursuant to the Contractual Assessment Law and The Improvement Bond Act of 1915, being Division 10 of the Streets and Highways Code of the State (the “1915 Act”); and

WHEREAS, the Los Angeles County Public Works Financing Authority (the “Authority”) may, in accordance with Articles 1 through 4 (commencing with Section 6500) of the Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (as amended, the “JPA Act”), issue revenue bonds for the purpose of providing financial assistance to its contracting parties, including through the acquisition of County Assessment Bonds; and

WHEREAS, the County Assessment Bonds may be sold by a negotiated sale or by competitive bid or acquired by the Authority in accordance with the JPA Act, all as may be determined as being in the best interests of the County; and

WHEREAS, the County also desires to finance the disbursement of amounts pursuant to the Assessment Contracts through the execution and delivery of one or more Loan Agreements (each, a “Loan Agreement”) with the Authority; and

WHEREAS, the Authority may fund loans under the Loan Agreements (the “Loans”) with proceeds of revenue bonds to be issued by the Authority pursuant to the JPA Act; and

WHEREAS, the Board of Directors (the “Board of Directors”) of the Authority will approve a resolution (the “Authority Resolution”) authorizing the issuance of its Los Angeles County Energy Program Contractual Assessment Revenue Bonds (the “Authority Revenue Bonds” and, together with the County Assessment Bonds, the “Bonds”) from time to time in one or more series for the purpose of acquiring County Assessment Bonds or funding Loans to the County, as applicable, in each case to finance disbursements to free and willing property owners to finance the Improvements pursuant to LACEP and the Assessment Contracts; and

WHEREAS, in furtherance of LACEP and in order to effect the issuance and administration of the Bonds and any other evidence of indebtedness relating to LACEP, the County desires to establish a special fund to be held by the County called the “Energy Fund”; and

WHEREAS, in order to effect the issuance of the Bonds, the County desires to approve the form of and authorize the execution and delivery of the following documents, the forms of which are on file with the Clerk of the Board of Supervisors (the “Clerk of the Board of Supervisors”):

(1) an indenture (the “County Indenture”) by and among the County, the Treasurer and Tax Collector of the County, as paying agent thereunder, and the Auditor-Controller of the County, as fiscal agent thereunder, pursuant to which the County will issue one or more series of County Assessment Bonds;

(2) an indenture (the “Marks-Roos Indenture”) by and among the Authority, the Treasurer and Tax Collector of the County, as paying agent thereunder, and the Auditor-Controller of the County, as fiscal agent thereunder, pursuant to which the Authority will issue one or more series of Authority Revenue Bonds, the proceeds of which will be used to acquire County Assessment Bonds;

(3) a Loan Agreement by and between the County and the Authority pursuant to which the Authority agrees to lend to the County proceeds of certain Authority Revenue Bonds to finance Improvements under the Assessment Contracts; and

(4) an indenture (the “Authority Indenture” and, together with the County Indenture and the Marks-Roos Indenture, the “Indentures”) by and among the Authority, the County, the Treasurer and Tax Collector of the County, as paying agent thereunder, and the Auditor-Controller of the County, as fiscal agent thereunder, pursuant to which the Authority will issue

one or more series of Authority Revenue Bonds, the proceeds of which will be used to finance Loans under the Loan Agreements; and

WHEREAS, the Board of Supervisors desires to provide for the issuance of additional County Assessment Bonds and additional Authority Revenue Bonds (collectively the “Additional Bonds”) from time to time in one or more series under the County Indenture, the Marks-Roos Indenture, the Authority Indenture or any other instrument for the issuance of evidences of indebtedness secured by contractual assessments or secured by debt obligations that are in turn secured by contractual assessments (the “Additional Issuance Instruments”) and the authorization of any attendant issuance documents in connection with such issuance; and

WHEREAS, the Board of Supervisors desires to cause the filing of an action to determine the validity of the Assessments, the Assessment Contracts, the Indentures, the Bonds, the Additional Bonds, the Additional Issuance Instruments, this Resolution, the Resolution Establishing the LACEP, the Authority Resolution, the Loans and the Loan Agreements, and the actions proposed to be taken in connection therewith;

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. Recitals. The recitals set forth hereinabove are true and correct in all respects. The Board of Supervisors hereby finds and declares that the issuance of the Bonds in one or more series and the other actions contemplated by this Resolution are in the best interests of the County.

Section 2. Energy Fund. The Board of Supervisors hereby establishes a special fund to be held in trust by the County called the “Energy Fund” and a fund within the Energy Fund called the “Program Expense Fund.” Moneys in the Energy Fund and the funds and accounts therein shall be used and disbursed for the purpose of funding the Loans and administering LACEP. The Energy Fund may be subdivided into funds, accounts and sub-accounts as necessary or desirable for the administration of funds as contemplated in connection with issuance of one or more series of Bonds.

Section 3. Approval of the Bonds. The County hereby approves the initial issuance of the County Assessment Bonds in an aggregate principal amount of not to exceed \$100,000,000 for the purpose of funding LACEP; provided that the County Assessment Bonds shall have a final maturity of not to exceed 39 years from the second day of September next succeeding 12 months from their date of issuance and a true interest cost (including any bond insurance premiums, if any, and any reserve surety premiums, if any) not greater than the maximum rate of interest pursuant to applicable law; and provided, further, that the discount on the purchase price of the County Assessment Bonds to the underwriter for the County Assessment Bonds, if any, excluding original issue discount shall not exceed 2.0% of the aggregate principal amount of the County Assessment Bonds. The County Assessment Bonds may be sold by a negotiated sale or by competitive bid or acquired by the Authority in accordance with the JPA Act, all as may be determined as being in the best interests of the County, and the County Assessment Bonds may be secured or payable by a bank line of credit, letter of credit or other instrument, all as may be determined by either the Chief Executive

Officer or the Treasurer and Tax Collector of the County for and in the name and on behalf of the County.

The County hereby approves the initial issuance by the Authority of the Authority Revenue Bonds in an aggregate principal amount of not to exceed \$100,000,000 for the purpose of funding LACEP; provided that the Authority Revenue Bonds shall have a final maturity of not to exceed 39 years from the second day of September next succeeding 12 months from their date of issuance and a true interest cost (including any bond insurance premiums, if any, and any reserve surety premiums, if any) not greater than the maximum rate of interest pursuant to applicable law; and provided, further, that the discount on the purchase price of the Authority Revenue Bonds to the underwriter for the Authority Revenue Bonds, if any, excluding original issue discount shall not exceed 2.0% of the aggregate principal amount of the Authority Revenue Bonds. The Authority Revenue Bonds may be sold by a negotiated sale or by competitive bid and the Authority Revenue Bonds may be secured or payable by a bank line of credit, letter of credit or other instrument, all as may be determined by either the Chief Executive Officer or the Treasurer and Tax Collector of the County for and in the name and on behalf of the County.

Pursuant to the Marks-Roos Local Bond Pooling Act of 1985, the County hereby finds and determines that the issuance of the Authority Revenue Bonds will result in significant public benefits to the citizens of the County within the contemplation of Section 6586 of the Marks-Roos Local Bond Pooling Act of 1985.

Section 4. Loan Agreement. The form of the Loan Agreement by and between the County and the Authority, in the form presented at this meeting and on file with the Clerk of the Board of Supervisors, is hereby approved. Each of the Chair of the Board of Supervisors, the Chief Executive Officer and the County Treasurer, or any of them, or their designee (each, an "Authorized Officer"), is hereby authorized and directed, for and in the name and on behalf of the County, to execute and deliver the Loan Agreements in substantially said form, with such changes therein as may be requested by bond counsel and as the Authorized Officer executing the same may approve (such approval to be conclusively evidenced by such Authorized Officer's execution and delivery thereof).

Section 5. Indentures. The forms of the Indentures, in the forms presented at this meeting and on file with the Clerk of the Board of Supervisors, are hereby approved. The Board of Supervisors also approves other instruments and funding mechanisms substantially similar to the Indentures pursuant to which the Authority or the County will issue evidences of indebtedness secured by voluntary contractual assessments or secured by debt obligations that are in turn secured by contractual assessments; provided that proceeds of such indebtedness are used to help finance Loans under LACEP or acquire County Assessment Bonds, the proceeds of which will be used to finance Improvements under LACEP. Each Authorized Officer, acting singly, is authorized and directed, for and in the name and on behalf of the County, to execute and deliver the Indentures in substantially said forms, with such changes therein as may be requested by bond counsel and as the officer executing the same may require or approve, including such matters as are authorized by Section 3 hereof (such approval to be conclusively evidenced by such Authorized Officer's execution and delivery thereof).

Section 6. Validation. The Authorized Officers are, and each of them hereby is authorized, in consultation with County Counsel and with the assistance of bond counsel, to

prepare and cause to be filed and prosecuted to completion all proceedings required for the judicial validation of the Assessments, the Assessment Contracts, the Indentures, the Bonds, the Additional Bonds, the Additional Issuance Instruments, this Resolution, the Resolution Establishing the LACEP, the Authority Resolution, the Loans, the Loan Agreements and the Indenture in the Superior Court of Los Angeles County, under and pursuant to the provisions of Sections 860 et seq. of the California Code of Civil Procedure. The Board of Supervisors further authorizes the Authorized Officers and all other officers, employees and agents of the County to take any and all actions, including the execution and delivery or appropriate documentation, as may be required to conclude such judicial validation proceedings.

Section 7. Other Actions. The Authorized Officers and all other officers of the County are hereby authorized and directed, jointly and severally, to do any and all acts and things and deliver any and all documents which they may deem necessary or advisable in order to effectuate the purposes of this Resolution and all matters incidental thereto, including issuing the Bonds and entering into Assessment Contracts, and any such actions previously taken by such officers are hereby ratified and confirmed.

Section 8. Effective Date. This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was on the 25<sup>th</sup> day of May, 2010, adopted by the Board of Supervisors of the County of Los Angeles and ex-officio the governing body of all other special assessment and taxing districts, agencies and authorities for which said Board so acts.



SACHI A. HAMAI  
Executive Officer of the  
Board of Supervisors of the  
County of Los Angeles

By: Sachelle Smitherman  
Deputy

APPROVED AS TO FORM:

ANDREA SHERIDAN ORDIN  
County Counsel

By: Cammy C. DuPont  
Cammy C. DuPont  
Principal Deputy County Counsel

**INDENTURE**

**Dated as of \_\_\_\_\_, 2010**

**by and among**

**COUNTY OF LOS ANGELES, CALIFORNIA,**

**TREASURER AND TAX COLLECTOR OF THE COUNTY OF LOS ANGELES  
as the Paying Agent**

**and**

**AUDITOR-CONTROLLER OF THE COUNTY OF LOS ANGELES  
as the Fiscal Agent**

**\$ \_\_\_\_\_**

**Los Angeles County Energy Program  
Contractual Assessment Limited Obligation Improvement Bonds, Series A**

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## INDENTURE

This COUNTY INDENTURE (this “County Indenture”), dated as of \_\_\_\_\_ 1, 2010, is executed by and among the County of Los Angeles (the “County”), a political subdivision of the State of California (the “State”), the Treasurer and Tax Collector of the County, as paying agent (the “Paying Agent”) on behalf of the owners of the herein described Bonds, and the Auditor-Controller of the County, as fiscal agent (the “Fiscal Agent”) on behalf of the owners of the herein described Bonds.

WHEREAS, Chapter 29 of Part 3 of Division 7 of the Streets and Highways Code of the State of California (the “Contractual Assessment Law”) authorizes counties to assist free and willing property owners in financing the installation of distributed generation renewable energy sources and energy and water efficiency improvements (the “Improvements”) that are permanently fixed to residential, commercial, industrial or other real property through a contractual assessment program; and

WHEREAS, the Board of Supervisors (the “Board of Supervisors”) of the County, previously approved a resolution (the “Resolution of Intention”) declaring its intention to order the implementation of a contractual assessment program to finance the acquisition, construction and installation of the Improvements pursuant to the Contractual Assessment Law; and

WHEREAS, following notice duly given and a hearing in accordance with applicable law, the Board of Supervisors approved a resolution which, among other things, authorized the establishment of the Los Angeles County Energy Program (the “LACEP”) to finance the acquisition, construction and installation of the Improvements on properties in the County through the use of contractual assessments pursuant to the Contractual Assessment Law; and

WHEREAS, pursuant to LACEP, the County will enter into contractual assessment agreements (each, an “Assessment Contract”) with free and willing property owners (the “Property Owners”) pursuant to which the County will assist in financing the acquisition, construction and installation of Improvements on or in such owners’ respective properties and levy contractual assessments (each, an “Assessment”) on the applicable properties in the amounts set forth in the Assessment Contracts; and

WHEREAS, the County will issue Los Angeles County Energy Program Contractual Assessment Limited Obligation Improvement Bonds (the “New Money Assessment Bonds”) from time to time in one or more series under and pursuant to the Contractual Assessment Law, The Improvement Bond Act of 1915, being Division 10 of the Streets and Highways Code of the State (the “1915 Act”) and this County Indenture for the purpose of funding disbursements to free and willing property owners to finance the Improvements pursuant to LACEP; and

WHEREAS, the County may issue Los Angeles County Energy Program Contractual Assessment Limited Obligation Improvement Refunding Assessment Bonds (the “Refunding Assessment Bonds” and, together with the New Money Assessment Bonds, the

“Bonds”) from time to time in one or more series under and pursuant to the Contractual Assessment Law, the 1915 Act and this County Indenture for the purpose of refinancing the bonds referenced above; and

WHEREAS, in order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured, and to secure the payment of the principal thereof and premium, if any, and interest thereon, the parties hereto have authorized the execution and delivery of this County Indenture; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this County Indenture do exist, have happened and have been performed in due time, form, and manner as required by law, and the parties hereto are duly authorized to execute and enter into this County Indenture;

NOW, THEREFORE, in consideration of the covenants and provisions herein set forth and for other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS; RULES OF CONSTRUCTION; AUTHORIZATION AND PURPOSE OF BONDS**

Section 1.1. Definitions. Unless the context otherwise requires, the following terms shall have the following meanings for purposes of this County Indenture:

“1913 Act” means The Municipal Improvement Act of 1913, being Division 12 of the Streets and Highways Code of the State.

“1915 Act” means The Improvement Bond Act of 1915, being Division 10 of the Streets and Highways Code of the State.

“Additional Bonds” means one or more series of bonds issued pursuant to this County Indenture subsequent to the issuance of the Series A Bonds.

“Administrative Expenses” means (i) the ordinary and necessary costs of administering the levy and collection of the Assessments and all other administrative costs and incidental expenses related to the Bonds, including, but not limited to, any annual audit fees, Paying Agent fees, Fiscal Agent fees and such other costs as are paid or payable from amounts collected pursuant to Sections 8682, 8682.1 or 10312 of the California Streets and Highway Code and (ii) capitalized costs of establishing and administering LACEP.

“Annual Administrative Assessment” means the annual assessment levied against the properties of owners participating in LACEP to pay the ordinary and necessary costs incurred by the County in connection with the administration and collection of the Assessments, from the administration or registration of any associated bonds, including the Bonds, securities or other

financing arrangements, and from the administration of the Assessment Bond Reserve Fund or other related funds.

“Assessment Bond Reserve Fund” means the fund created and established pursuant to Section 4.1(d) hereof.

“Assessment Bond Reserve Requirement” means, as of the date of any calculation, which calculation shall be made by the Fiscal Agent, an amount equal to the least of (a) \_\_\_\_\_, or (b) 10% of the original principal amount of the Bonds. The Assessment Bond Reserve Requirement shall be calculated upon each payment or prepayment of an Assessment pursuant to Section 8881 and Section 8884 of the 1915 Act.

“Assessment Contracts” means the agreements by and between the County and free and willing property owners participating in LACEP and identified in Exhibit C hereto, pursuant to which the County agrees to provide financing to such property owners for the acquisition, construction and installation of Improvements to such owners’ properties.

“Assessment Installments” means the installments of principal, interest and premium, if any, to be paid on the unpaid Assessments by certain property owners pursuant to the terms of the related Assessment Contracts. The term “Assessment Installments” does not include the Annual Administrative Assessment.

“Assessment Payment Account” means the account by that name established and held by the Fiscal Agent pursuant to Section 4.1 hereof with respect to each Series of Bonds issued hereunder.

“Assessment Prepayment Account” means the account by that name established and held by the Fiscal Agent pursuant to Section 4.1 hereof with respect to each Series of Bonds issued hereunder.

“Assessment Revenues” means the revenues received by the County in each Fiscal Year from the collection of the annual Assessment Installments, including any interest and penalties thereon and the proceeds of the exercise of any of the remedies for delinquent payments available under the related Assessment Contracts or under the Contractual Assessment Law.

“Assessments” means the unpaid assessments levied by the County pursuant to the Contractual Assessment Law and the related Assessment Contracts constituting a first lien and charge upon certain real properties in the County.

“Auditor” means the Auditor-Controller of the County.

“Authority” means the Los Angeles County Public Works Financing Authority created pursuant to the JPA Act, together with its successors and assigns.

“Authority Revenue Bonds” means all series of bonds issued and outstanding under the Authority Indenture, which are secured by payments made on the Bonds purchased with the proceeds of such bonds.

“Authority Indenture” means the Indenture dated as of \_\_\_\_, 2010, by and among the Authority, the Treasurer and Tax Collector of the County of Los Angeles, as paying agent thereunder, and the Auditor-Controller of the County of Los Angeles, as fiscal agent thereunder, and any supplements thereto.

“Authorized Investment” means any legal investment of County funds.

“Authorized Representative of the County” means the Treasurer, the Auditor, the Program Administrator or any other person designated by such officers and authorized to act on behalf of the County under or with respect to this County Indenture and all other agreements related hereto.

“Board of Supervisors” means the Board of Supervisors of the County.

“Bond Date” means the dated date of the Bonds, which shall be the Closing Date thereof.

“Bonds” means the contractual assessment limited obligation improvement bonds authorized by and at any time Outstanding pursuant to the provisions of this County Indenture and as designated pursuant to Section 2.3 hereof, including the Series A Bonds and any Additional Bonds.

“Business Day” means any day other than (i) a Saturday or a Sunday, (ii) a day on which banking institutions in the State or the Federal Reserve System are authorized or obligated by law or executive order to be closed, or (iii) a day on which the County offices are closed on account of an official holiday recognized by the County.

“Closing Date” means, with respect to each Series of Bonds the date of initial delivery of such Series of Bonds.

“Contractual Assessment Law” means Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code, commencing with Section 5898.10, and all laws amendatory thereof or supplemental thereto.

“Costs of Issuance” means all of the costs of issuing the Bonds, including, but not limited to, all printing and document preparation expenses in connection with this County Indenture, the Bonds and any and all other agreements, instruments, certificates or other documents issued in connection therewith; legal fees and expenses of counsel with respect to the issuance of the Bonds; fees and expenses of the financial advisor with respect to the issuance of the Bonds; underwriters’ fees; the initial fees and expenses of the Fiscal Agent and the Paying Agent, if any (including without limitation, origination fees and first annual fees payable in advance); and other fees and expenses incurred in connection with the issuance of the Bonds or the implementation of LACEP.

“Costs of Issuance Fund” means the fund created and established pursuant to Section 4.1 hereof.

“County” means the County of Los Angeles, a political subdivision of the State.

“Debt Service Fund” means the fund created and established pursuant to Section 4.1 hereof.

“DTC” means The Depository Trust Company in New York, New York.

“Energy Fund” means the Energy Fund established pursuant to Resolution No. \_\_\_\_\_ of the Board of Supervisors, adopted on May 25, 2010.

“Escrow Fund” means the fund by that name created and established pursuant to Section 4.1 hereof.

“Event of Default” means any occurrence or event specified in and defined by Section 8.1 hereof.

“Federal Securities” means any of the following which at the time of investment are legal investments under the laws of the State of California for the funds proposed to be invested therein: (a) direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America); and (b) obligations of any agency, department or instrumentality of the United States of America the timely payment of principal of and interest on which are fully guaranteed by the United States of America.

“Fiscal Agent” means (i) the Auditor or his designated agent or (ii) any bank, trust company, national banking association or other financial institution appointed as fiscal agent for the Bonds in the manner provided in this County Indenture.

“Fiscal Year” means any twelve-month period extending from July 1st in one calendar year to June 30th of the succeeding calendar year, both dates inclusive, or any other twelve-month period selected and designated by the County as its official fiscal year period.

“Improvement Fund” means the fund by that name established and held by the Fiscal Agent pursuant to Section 4.1 hereof.

“Improvements” means the qualifying distributed generation renewable energy sources and energy and water efficiency improvements acquired, constructed and/or installed on or in properties in the County under LACEP and the related Assessment Contracts.

“County Indenture” means this County Indenture, dated as of \_\_\_\_\_ 1, 2010, by and among the County, the Paying Agent and the Fiscal Agent, as amended or supplemented pursuant to the terms hereof.

“Independent Public Accountant” means any certified public accountant or firm of certified public accountants appointed and paid by the County who, or each of whom (i) is in fact independent and not under domination of the County; (ii) does not have any substantial interest, direct or indirect the County; and (iii) is not connected with the County as an officer or employee of the County but who may be regularly retained to make annual or other audits of the books of, or reports to, the County.

“Information Services” means Financial Information, Inc.’s “Daily Called Bond Services,” 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; Moody’s Investors Service “Municipal and Government,” 99 Church Street, 8th Floor, New York, New York 10007, Attention: Municipal News Reports; Kenny S&P, “Notification Department,” 55 Water Street, 45th Floor, New York, New York 10041; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to the Bonds to be redeemed as the County may designate in a Written Request of the County filed with the Fiscal Agent.

“Interest Payment Date” means, with respect to any Bond, March 2 and September 2 in each year, beginning on March 2 in the year immediately succeeding the August deadline by which the Assessments of the applicable Assessment Contracts have been enrolled on the County tax roll, and continuing thereafter so long as any Bonds remain Outstanding.

“JPA Act” means the Joint Exercise of Powers Act (being Chapter 5 of Division 7 of Title 1 of the Government Code of the State, as amended) and all laws amendatory thereof or supplementing thereto.

“LACEP” means the Los Angeles County Energy Program established pursuant to Resolution No. \_\_\_\_\_ of the Board of Supervisors, adopted on [May 25, 2010] under the Contractual Assessment Law.

“Maturity Date” means the date specified in any Bond on which the principal of such Bond becomes due and payable.

“New Money Assessment Bonds” means Bonds issued to finance Improvements in accordance with LACEP and the related Assessment Contracts.

“Outstanding” means, subject to the provisions of Section 9.6 hereof, all Bonds theretofore or thereupon being authenticated and delivered by the Paying Agent under this County Indenture except:

- (1) Bonds theretofore canceled by the Paying Agent or surrendered to the Paying Agent for cancellation;
- (2) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Paying Agent pursuant to this County Indenture;
- (3) From and after the date fixed for redemption, Bonds or portions thereof designated for redemption for which notice of redemption has been duly given and the amount necessary for redemption has been made available for that purpose; and
- (4) Bonds for the payment or redemption of which funds or eligible securities in the necessary amount shall have theretofore been deposited with the Fiscal Agent in accordance with Section 9.1 hereof (whether on or prior to the maturity or Redemption Date of such Bonds).

“Owner” when used with respect to any Bond, means the person in whose name the ownership of such Bond is registered on the Registration Books maintained by the Fiscal Agent.

“Paying Agent” means the Treasurer and its designated agents, any third party contractor serving as Paying Agent, and their successors or assigns, acting in the capacity of registrar, paying agent and transfer agent. The Treasurer is authorized to contract with any third party to perform the services of Paying Agent under this County Indenture.

“Principal Payment Date” means September 2 of each year, commencing September 2, 20\_\_ with respect to the Series A Bonds.

“Prior Assessment Bonds” means any or all (as the context may require) Series of Bonds designated for refunding with proceeds of a Series of Refunding Assessment Bonds.

“Program Administrator” means the Director of the Internal Services Department of the County, pursuant to the Resolution of Intention, or any designee of such officer.

“Program Expense Fund” means the fund by that name and established in the Energy Fund held by the County in connection with the Annual Administrative Assessment and other amounts received for payment of Administrative Expenses and administered pursuant to Section 4.8 hereof.

“Record Date” means, with respect to any Interest Payment Date, the fifteenth day of the calendar month immediately preceding the applicable Interest Payment Date, whether or not such day is a Business Day.

“Redemption Date” means, with respect to any Bonds, the date on which such Bonds have been called for redemption pursuant to Section 3.1 or Section 3.2 of this County Indenture prior to their Maturity Date.

“Redemption Notice” has the meaning provided in Section 3.6 hereof.

“Refunding Assessment Bonds” means Bonds issued to finance the refunding of bonds outstanding under this County Indenture or other issuance instrument and secured by proceeds derived from payments of Revenues.

“Registration Books” means the records maintained by the Paying Agent pursuant to Section 2.9 hereof for the registration and transfer of ownership of the Bonds.

“Representation Letter” means the Blanket Letter of Representations delivered upon or prior to the issuance of the Bonds to DTC by the County.

“Resolution Establishing LACEP” means Resolution No. \_\_\_\_\_ of the Board of Supervisors adopted on May 25, 2010.

“Resolution of Intention” means Resolution No. \_\_\_\_\_ of the Board of Supervisors adopted on April 6, 2010.

“Revenues” shall mean the Assessment Installments and any foreclosure proceedings relating thereto, the proceeds of the sale of the Bonds, all amounts in the Debt Service Fund and the accounts thereunder and all interest, profits and other income received from the investment of such amounts, less the amounts deducted by the County and set-aside to pay the costs and expenses[, up to a maximum of \$\_\_\_\_\_ in each Fiscal Year], incurred by the County in connection with the capitalized costs of establishing and administering LACEP.

“Securities Depository” means The Depository Trust Company, 55 Water Street, 50th Floor, New York, N.Y. 10041-0099 Attn. Call Notification Department, Fax (212) 855 7232, or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other securities depositories, or no such depositories, as the County may indicate in a Written Request of the County delivered to the Paying Agent.

“Series” means each Series of Bonds issued and designated pursuant to and in accordance with Section 2.1, Section 2.3 or Section 2.15 hereof.

“Series A Bonds” means the County’s Los Angeles County Energy Program Contractual Assessment Limited Obligation Improvement Bonds, Series A.

“State” means the State of California.

“Supplemental Indenture” means any indenture adopted by the parties hereto amendatory of or supplemental to this County Indenture.

“Treasurer” means the Treasurer and Tax Collector of the County.

“Written Request of the County” means a request in writing signed by an Authorized Representative of the County.

Section 1.2. Rules of Construction. All references in this County Indenture to “Sections,” and other subdivisions, unless indicated otherwise, are to the corresponding Sections or subdivisions of this County Indenture; and the words “herein,” “hereof,” “hereunder,” and other words of similar import refer to this County Indenture as a whole and not to any particular Section or subdivision hereof.

Section 1.3. Authorization and Purpose of Bonds. The Board of Supervisors has reviewed all proceedings heretofore taken relative to the authorization of the Bonds and has found, as a result of such review, and hereby finds and determines that all things, conditions and acts required by law to exist, happen and be performed precedent to and in the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the County is now authorized, pursuant to each and every requirement of law, to issue the Bonds in the manner and form as in this County Indenture provided. The Board of Supervisors hereby authorizes the issuance of the Bonds pursuant to the Contractual Assessment Law, the 1915 Act and this County Indenture for the purpose of funding disbursements pursuant to the Assessment Contracts to property owners for the cost of Improvements pursuant to LACEP.

## **ARTICLE II**

### **THE BONDS**

#### **Section 2.1. Authorization and Purpose of Bonds; Equality of Bonds; Pledge; Limited Liability**

(a) The County is hereby authorized and directed to execute, and the Fiscal Agent is hereby authorized and directed upon written request of an Authorized Representative of the County to authenticate and deliver the Bonds. The County may authorize the execution, authentication and delivery of Additional Bonds at any time after the execution, authentication and delivery of the Bonds only as provided in Section 2.15 hereof, which Additional Bonds shall contain such additional designation as may be determined by the County, including the designation of Refunding Assessment Bonds, as appropriate. The Bonds may be issued in book-entry form or certificate form.

(b) The County hereby pledges and assigns to the Paying Agent and the Fiscal Agent, as applicable, in trust for the protection and security of the Owners, all of its right, title and interest in the Revenues. The Bonds shall be and are equally secured by a pledge of and lien upon the Revenues.

(c) The Bonds and interest thereon are not payable from the general funds of the County. Neither the credit of the County nor the taxing power of the County is pledged for the payment of the Bonds or the interest thereon, and, except as provided herein, no Owner of the Bonds may compel the exercise of any taxing power by the County or force the forfeiture of any of its property. The principal of, and premium (if any) and interest on the Bonds are not a debt of the County nor a legal or equitable pledge, charge, lien or encumbrance upon any of the property of the County, or upon any of their income, receipts or revenues, other than the Revenues.

**Section 2.2. Collection of Assessments.** (a) The Assessment Installments shall be payable as provided in the Assessment Contracts and shall be payable in the same manner and at the same time and in the same installments as general taxes on real property are payable, and become delinquent at the same times and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do general taxes on real property. Nothing in this County Indenture or in any Supplemental Indenture shall preclude the redemption prior to maturity of any Bonds or the payment of the Bonds from proceeds of refunding bonds issued under any law of the State.

(b) Except for the collection of the Assessment Installments and the observance and performance of the other conditions, covenants and terms contained herein or in the 1915 Act or the Contractual Assessment Law required to be observed or performed by it, the County shall not have any obligation or liability to the Owners with respect to this County Indenture or the Bonds.

**Section 2.3. Issuance of Series A Bonds; Description of Series A Bonds.** (a) The Series A Bonds shall consist of such Bonds designated generally as "County of Los Angeles Los Angeles County Energy Program Contractual Assessment Limited Obligation Improvement

Bonds, Series A”. Series A Bonds in the aggregate principal amount not to exceed \$\_\_\_\_\_ shall be issued for the purposes of funding disbursements of such amounts and any other moneys available therefor to free and willing property owners to finance the Improvements pursuant to LACEP.

(b) The Series A Bonds may be issued in one or more subseries, with the principal amount of each subseries of Series A Bonds to be determined by the Treasurer.

(c) Each Series of Bonds shall bear a series designation as determined by the County.

(d) The Series A Bonds shall be issued only in fully registered form without coupons in the denomination of \$5,000 or any integral multiple thereof, or in such other denomination or denominations as determined by the County. The Series A Bonds shall be dated as of their date of delivery and shall mature and be payable on September 2 in the years and in the principal amounts and shall bear interest as set forth below:

**Los Angeles County Energy Program  
Contractual Assessment Limited Obligation Improvements, Series A**

<b>Maturity Date (September 2)</b>	<b>Principal Amount</b>	<b>Interest Rate</b>
	\$	

The interest rate for the Series A Bonds shall be calculated on the basis of a 360-day year of twelve 30-day months.

(e) If the Series A Bonds are issued in book-entry form, the Series A Bonds shall be initially registered in the name of “Cede & Co.,” as nominee of DTC. If the Series A Bonds are issued in certificate form, the Series A Bonds shall be initially registered pursuant to Section 2.5 hereof. The Series A Bonds shall be evidenced by a single fully registered bond in the principal amount of the Series A Bonds.

Section 2.4. Medium and Payment. Principal of, and premium (if any) and interest on the Bonds shall be payable in lawful money of the United States of America. The principal of each Series of Bonds shall be payable on the respective Maturity Date set forth in the applicable Bonds. Interest with respect to each Bond shall accrue from the respective Bond Date. Interest on any Bond shall be payable from the Interest Payment Date next preceding the date of authentication of that Bond, unless (i) such date of authentication is an Interest Payment Date, in which event interest shall be payable from such date of authentication, (ii) the date of authentication is after a Record Date but prior to the immediately succeeding Interest Payment

Date, in which event interest shall be payable from such Interest Payment Date, or (iii) the date of authentication is prior to the close of business on the first Record Date, in which event interest shall be payable from the Bond Date; provided, however, that if at the time of authentication of such Bond, interest is in default, interest on that Bond shall be payable from the last Interest Payment Date to which the interest has been paid or made available for payment.

Principal of and interest on any Bond shall be paid by check of the Paying Agent mailed on or before the Interest Payment Date by first class mail, postage prepaid, to the person whose name appears in the Registration Books as the Owner of such Bond as of the close of business on the Record Date, to the address that appears on the Registration Books, provided that the payment of principal of the Bonds on the final Maturity Date and the payment of the principal of the Bonds and any premium due upon the redemption thereof shall be payable upon presentation and surrender thereof at maturity or earlier redemption at the office of the Paying Agent. In addition, upon a request in writing received by the Paying Agent on or before the applicable Record Date from an Owner of \$1,000,000 or more in principal amount of the Bonds payment shall be made on the Interest Payment Date by wire transfer in immediately available funds to an account designated by such Owner.

Each Bond shall bear interest until its principal sum has been paid; provided, however, that if at the Maturity Date of any Bond, or if at the Redemption Date of any Bond which has been duly called for redemption as herein provided, funds are available for the payment or redemption thereof in full accordance with the terms of this County Indenture, the Bond shall then cease to bear interest.

Section 2.5. Form of Bonds and Certificate of Authentication and Registration. The Bonds shall be initially issued in the form of a fully registered bond or bonds registered in the name of the purchaser thereof. The form of the Bond, the form of the certificate of authentication and the form of registration thereon shall be substantially in the form attached hereto as Exhibit A and incorporated herein by this reference, with any necessary or appropriate variations, omissions and insertions as permitted or required hereunder. The Bonds may be printed, lithographed or typewritten and may contain such reference to any of the provisions of this County Indenture as may be appropriate.

Section 2.6. Execution and Authentication. The Bonds shall be executed by the manual or facsimile signature of the Treasurer and attested by the manual or facsimile signature of the Executive Officer Clerk of the Board of Supervisors. In case any one or more of the officers who shall have signed any of the Bonds shall cease to be such officer before the Bonds so signed have been authenticated and delivered by the Paying Agent (including new Bonds delivered pursuant to the provisions hereof with reference to the transfer and exchange of Bonds or to lost, stolen, destroyed or mutilated Bonds), such Bonds may, nevertheless, be authenticated and delivered as herein provided, and may be issued as if the persons who signed such Bonds had not ceased to hold such offices.

The Bonds shall bear thereon a certificate of authentication and registration, in the form set forth in Exhibit A hereto, executed by the manual signature of the Paying Agent. Only such Bonds as shall bear thereon such certificate of authentication and registration shall be entitled to any right or benefit under this County Indenture, and no Bond shall be valid or

obligatory for any purpose until such certificate of authentication and registration shall have been duly executed by the Paying Agent.

Section 2.7. Registration of Exchange or Transfer. The registration of any Bond may, in accordance with its terms, be transferred upon the Registration Books by the person in whose name it is registered, in person or by his or her duly authorized attorney, upon surrender of such Bond for cancellation at the office of the Paying Agent, accompanied by delivery of a written instrument of transfer in a form acceptable to the Paying Agent and duly executed by the Owner or his or her duly authorized attorney. Bonds may be exchanged at the office of the Paying Agent for a like aggregate principal amount of Bonds of authorized denominations of the same maturity and interest rate. The Paying Agent will not charge for any new Bond issued upon any transfer or exchange, but may require the Owner requesting such transfer or exchange to pay any tax or other governmental charge required to be paid with respect to such transfer or exchange. Whenever any Bond or Bonds shall be surrendered for registration of transfer or exchange, the Paying Agent shall authenticate and deliver a new Bond or Bonds of the same maturity, for a like aggregate principal amount; provided that the Paying Agent shall not be required to register transfers or make exchanges during the 15 days immediately preceding any Interest Payment Date, and, of (i) Bonds for a period of 15 days next preceding the date of any selection of Bonds to be redeemed, or (ii) any Bonds chosen for redemption.

Section 2.8. Mutilated, Lost, Destroyed or Stolen Bonds. If any Bond shall become mutilated, the Treasurer, at the expense of the Owner of such Bond, shall execute, and the Paying Agent shall thereupon authenticate and deliver a new Bond of like Series, tenor, date, maturity and aggregate principal amount in authorized denomination in exchange and substitution for the Bond so mutilated, but only upon surrender to the Paying Agent of the Bond so mutilated. Every mutilated Bond so surrendered to the Paying Agent shall be cancelled and destroyed. If any Bond issued hereunder shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Paying Agent and, if such evidence is satisfactory to the Paying Agent and indemnity satisfactory to the Paying Agent shall be given, the Treasurer, at the expense of the Owner, shall execute, the Paying Agent shall thereupon authenticate and deliver, a new Bond of like Series, tenor and maturity numbered and dated as the Paying Agent shall determine in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond shall have matured or shall have been called for redemption, instead of issuing a substitute Bond the Paying Agent may pay the same without surrender thereof upon receipt of indemnity satisfactory to the Fiscal Agent). The Paying Agent may require payment of a reasonable fee for each new Bond issued under this Section 2.8 and of the expenses which may be incurred by the County and the Paying Agent. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to have been lost, destroyed or stolen shall be equally and proportionately entitled to the benefits hereof with all other Bonds secured hereby. The Paying Agent shall not treat both the original Bond and any replacement Bond as being Outstanding for the purpose of determining the principal amount of Bonds which may be executed, authenticated and delivered hereunder, but both the original and replacement Bond shall be treated as one and the same.

Section 2.9. Registration Books. The Paying Agent will keep or cause to be kept, at its principal office, sufficient books for the registration and transfer of the Bonds, and, upon presentation for such purpose, the Paying Agent shall, under such reasonable regulations as

he or she may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books, Bonds as herein provided.

The County and the Paying Agent may treat the Owner of any Bond whose name appears on the Registration Books as the absolute Owner of such Bond for any and all purposes, and the County and the Paying Agent shall not be affected by any notice to the contrary. The County and the Paying Agent may rely on the address of the Owner as it appears in the Registration Books for any and all purposes. It shall be the duty of each Owner to give written notice to the County and the Paying Agent of any change in such Owner's address so that the Registration Books may be revised accordingly.

Section 2.10. Special Provisions as to Bonds Issued In Book-Entry Form. The following provisions shall apply only if the Bonds are issued in book-entry form:

(a) Except as otherwise provided in subsections (b) and (c) of this Section 2.10, all of the Bonds initially executed and delivered hereunder shall be registered in the name of Cede & Co., as nominee for DTC, or such other nominee as DTC shall request pursuant to the Representation Letter. Payment of the principal of and interest on each Bonds registered in the name of Cede & Co. shall be made to the account, in the manner and at the address indicated in or pursuant to the Representation Letter delivered to DTC by the County.

(b) The Bonds executed and delivered pursuant to this Section 2.10 shall be in the form of a single authenticated fully registered bond for each maturity of Bond. The ownership of all such Bonds shall be registered in the registration books maintained by the Paying Agent pursuant to Section 2.09 in the name of Cede & Co., as nominee of DTC, or such other nominee as DTC may request. The Paying Agent and the County may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal of and interest on such Bonds, selecting any Bonds or portions thereof to be prepaid, giving any notice permitted or required to be given to an Owner under this County Indenture, registering the transfer of Bonds, obtaining any consent or other action to be taken by the Owners and for all other purposes whatsoever; and neither the Paying Agent nor the County shall be affected by any notice to the contrary. Neither the Paying Agent nor the County shall have any responsibility or obligation to any Participant (which shall mean, for purposes of this Section 2.10, securities brokers and dealers, banks, trust companies, clearing corporations and other entities, some of whom directly or indirectly own DTC), any person claiming a beneficial ownership interest in the Bonds under or through DTC or any Participant, or any other person which is not shown on the registration records as being an Owner, with respect to (i) the accuracy of any records maintained by DTC or any Participant; (ii) the payment by DTC or any Participant of any amount in respect of the principal or interest represented by such Series A Bonds; (iii) any notice which is permitted or required to be given to the Owners under this County Indenture; (iv) the selection by DTC or any Participant of any person to receive payment in the event, if any, of a partial prepayment of the Bonds; or (v) any consent given or other action taken by DTC as Owner. The Paying Agent shall pay all principal of and premium, if any, and interest on the Bonds only at the times, to the accounts, at the addresses and otherwise in accordance with the Representation Letter. Upon delivery by DTC to the Paying Agent of written notice to the effect that DTC has determined to substitute a new nominee in place of its

then existing nominee, the Bonds will be transferable to such new nominee in accordance with subsection (f) of this Section 2.10.

(c) In the event that the County determines that it is in the best interests of the beneficial owners of the Bonds that they be able to obtain bonds, the Paying Agent shall, upon the written instruction of the County, so notify DTC, whereupon DTC shall notify the Participants of the availability through DTC of Bonds. In such event, the Bonds will be transferable in accordance with subsection (f) of this Section 2.10. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice of such discontinuance to the County or the Paying Agent and discharging its responsibilities with respect thereto under applicable law. In such event, the Bonds will be transferable in accordance with subsection (f) of this Section 2.10. Whenever DTC requests the County, or the Paying Agent to do so, the Paying Agent and the County will cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of all Bonds evidencing the Bonds then Outstanding. In such event, the Bonds will be transferable to such securities depository in accordance with subsection (f) of this Section 2.10, and thereafter, all reference in this County Indenture to DTC or its nominee shall be deemed to refer to such successor securities depository and its nominee, as appropriate.

(d) Notwithstanding any other provision of this County Indenture to the contrary, so long as all Bonds Outstanding are registered in the name of any nominee of DTC, all payments with respect to the principal and interest represented by each such Bond and all notices with respect to each such Bond shall be made and given, respectively, to DTC as provided in the Representation Letter.

(e) The County shall execute and deliver the Representation Letter and, in connection with any successor nominee for DTC and any successor depository, enter into comparable arrangements, and shall have the same rights with respect to its actions thereunder as it has with respect to its actions under this County Indenture.

(f) In the event that any transfer or exchange of Bonds is authorized under subsection (b) or (c) of this Section 2.10, such transfer or exchange shall be accomplished upon receipt by the Paying Agent from the registered owner thereof of the Bonds to be transferred or exchanged and appropriate instruments of transfer to the permitted transferee, all in accordance with the applicable provisions of Section 2.7. In the event Bonds are issued to holders other than Cede & Co., its successor as nominee for DTC as holder of all the Bonds, another securities depository as holder of all the Bonds, or the nominee of such successor securities depository, the provisions of Section 2.3, Section 2.9 and Article III shall also apply to, among other things, the registration, exchange and transfer of the Bonds and the method of payment of principal of, premium, if any, and interest on the Bonds.

Section 2.11. Validity of the Bonds. The validity of the authorization and issuance of the Bonds shall not be dependent upon the completion of the Improvements or upon the performance by any person of such person's obligation with respect to the Improvements.

Section 2.12. Refunding of Bonds. The Bonds may be refunded by the County in accordance with Section 4.9 and may be refunded at any other time by the County as

permitted by and in accordance with this County Indenture and applicable law including, but not limited to, the 1915 Act.

Section 2.13. Unclaimed Money. To the extent permitted by law, all money which the Paying Agent shall have received from any source and set aside for the purpose of paying or redeeming any of the Bonds shall be held for the respective Owners of such Bonds, but any money which shall be so set aside or deposited by the Paying Agent and which shall remain unclaimed by the Owners of such Bonds for a period of one year after the date on which any payment or redemption with respect to such Bonds shall have become due and payable shall be transferred to the County for use in connection with LACEP; provided, however, that the Paying Agent, before making such payment, shall cause notice of unclaimed money to be mailed to the Owners of such Bonds, by first class mail, postage prepaid. Thereafter, the Owners of such Bonds shall look only to the County for payment and then only to the extent of the amount so received without any interest thereon.

Section 2.14. Nonpresentment of Bonds. Except as otherwise provided in Section 2.13 hereof, in the event any Bonds shall not be presented for payment when the principal or redemption price thereof becomes due, if funds sufficient to pay such Bonds shall be held by the Paying Agent for the benefit of the Owners thereof, all liability of the County to the Owners thereof shall forthwith cease and be completely discharged and thereupon it shall be the duty of the Paying Agent to hold such funds (subject to Section 2.13 hereof), without liability for interest thereon, for the benefit of the Owners of such Bonds, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on or with respect to such Bonds.

Section 2.15. Additional Bonds. (a) The County hereby authorizes and approves the issuance of Additional Bonds for the purpose of financing further disbursements under and in accordance with the LACEP, which Additional Bonds shall be issued and delivered pursuant to Supplemental Indentures and agreements, including additional bond purchase agreements, as may be approved by the Board of Supervisors from time to time.

The County may issue bonds of equal security with that of the Bonds payable from the Assessment Installments as provided herein on a parity with any Bonds theretofore issued hereunder, but only subject to the following conditions:

(i) The issuance of such Bonds shall have been authorized under and pursuant to the 1915 Act and under and pursuant hereto and shall have been provided for by a supplemental indenture which shall specify the following:

(1) The proceeds of the sale of such Bonds shall be applied for the purpose of providing funds to refund any Bonds issued hereunder or for the purpose of funding additional disbursements in connection with LACEP, which disbursements shall be repaid from additional Assessments pursuant to additional Assessment Contracts;

(2) The principal amount and designation of such Bonds and the denomination or denominations of the Bonds;

(3) The date, the maturity date or dates, the interest payment dates and the dates on which mandatory sinking fund payments are due, if any, for such Bonds; provided,

that (i) the serial Bonds shall be payable as to principal annually on September 2 of each year in which principal falls due, and the term Bonds shall have annual mandatory redemption on September 2, (ii) the Bonds shall be payable as to interest semiannually on March 2 and September 2 of each year, except that the first installment of interest may be payable on either March 2 or September 2 and shall become due on the interest payment date which is six months before the maturity of the first series of Bonds and the interest shall be payable thereafter semiannually on March 2 and September 2, (iii) all Bonds of like maturity shall be identical in all respects, except as to number or denomination, and (iv) serial maturities of serial Bonds or mandatory sinking fund payments for term Bonds, or any combination thereof, shall be established to provide for the redemption or payment of such Bonds on or before their respective maturity dates;

(4) The redemption premiums and terms, if any, for such Bonds;

(5) The form of the Bonds;

(6) The amount to be deposited from the proceeds of sale of such Bonds or other County funds, if any, in the Assessment Bond Reserve Fund to increase the amount therein to an amount at least equal to the Assessment Bond Reserve Requirement for all Outstanding Bonds of the County secured on a parity by the Assessment Installments; and

(7) Such other provisions that are appropriate or necessary and are not inconsistent with the provisions hereof; and

(ii) The County shall be in compliance with all agreements, conditions, covenants and terms contained herein and in all Supplemental Indentures required to be observed or performed by it.

(b) Additional Bonds authorized to be issued under this Section 2.15 may only be issued if no Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) has occurred and is continuing (unless such default is to be remedied upon the issuance of such Additional Bonds) and the Assessment Bond Reserve Requirement is to be satisfied upon the issuance of such Additional Bonds.

Section 2.16. Restrictions on Transfer of Bonds. The transfer of the Bonds shall be restricted [as determined by the County in connection with applicable law and County policy.]

### **ARTICLE III**

#### **REDEMPTION OF BONDS**

Section 3.1. Mandatory Redemption of Series A Bonds. The Series A Bonds shall be redeemed prior to maturity, in whole or in part on any Interest Payment Date, pro rata among maturities and by lot within a maturity, from prepaid assessments on deposit and available for such purpose in the related Assessment Prepayment Account of the Debt Service Fund, to the extent of and in the manner set forth in Section 4.4(d) of this County Indenture at the redemption price equal to 10\_% of the principal amount of the Series A Bonds to be redeemed, together with accrued interest to the date of redemption.

Section 3.2. Optional Redemption of Series A Bonds. The Series A Bonds maturing on or after September 2, 20\_\_ are subject to redemption prior to maturity, in whole or in part on any Interest Payment Date, on and after September 2, 20\_\_, pro rata among maturities and by lot within a maturity, from surplus monies on deposit and available for such purpose in the Debt Service Fund from sources other than those in the Assessment Prepayment Account, at the option of the County at the redemption price equal to the principal amount thereof, together with a premium (expressed as a percentage of the principal amount of Series A Bonds to be redeemed), plus accrued interest to the date of redemption as set forth in the following table:

<u>Redemption Dates</u>	<u>Redemption Premium</u>
Interest Payment Dates Through [March 2, 20__ – at least five years from date of issuance]	__%
September 2, 20__ and March 2, 20__	__
September 2, 20__ and March 2, 20__	__
September 2, 20__ and thereafter	__

In the event that the County shall elect to redeem the Series A Bonds as provided in this Section 3.2, the County shall give written notice to the Paying Agent of its election to so redeem the Series A Bonds, the redemption date and the principal amount of each Series of Bonds to be redeemed. Such notice shall be given at least [45] days but no more than [75] days prior to the redemption date.

Section 3.3. Mandatory Sinking Fund Redemption of Series A Bonds. The Series A Bonds maturing on September 2, 20\_\_ (the “Series A Term Bonds”) are also subject to mandatory sinking fund redemption in part, by lot, on such September 2 from mandatory sinking fund payments deposited into the Debt Service Fund, at a redemption price equal to the principal amount thereof, plus accrued interest thereon to the date fixed for redemption, without premium:

<u>Year</u>	<u>Principal Amount</u>
	\$
*	
_____	
	* Maturity.

If some but not all of the Series A Term Bonds maturing on September 2, 20\_\_ are redeemed pursuant to Section 3.1 or Section 3.2 hereof, the principal amount of Series A Term Bonds maturing on September 2, 20\_\_ to be subsequently redeemed pursuant to this subsection shall be reduced by the aggregate principal amount of the Series A Term Bonds maturing on September 2, 20\_\_ so redeemed pursuant to Section 3.1 or Section 3.2 hereof, such reduction to be allocated among redemption dates in amounts of \$5,000 or integral multiples thereof, as designated by the County in a written certificate of the County filed with the Fiscal Agent.

In lieu of having the Fiscal Agent deposit cash with the Paying Agent as a mandatory sinking fund payment, the County shall have the option to tender to the Paying Agent

for cancellation any amount of Series A Bonds purchased by the County, which Series A Bonds may be purchased by the County at public or private sale as and when and at such prices as the County may in its discretion determine. The principal amount of any Series A Bonds so purchased by the County and tendered to the Paying Agent in any twelve-month period ending on July 1 in any calendar year shall be credited towards and shall reduce the next mandatory sinking fund payments required to be made in the order in which they are required to be made pursuant to this Section 3.3.

Section 3.4. Selection of Bonds for Redemption. Whenever provision is made in this County Indenture for the redemption of less than all of a Series of Bonds, the Fiscal Agent shall select the Bonds to be redeemed from all Bonds of a Series not previously called for redemption, by lot in any manner which the Fiscal Agent in its sole discretion shall deem appropriate and fair, subject to compliance with Section 8768 of the Streets and Highways Code as specified in a written certificate of the County. For purposes of such selection, all Bonds of a Series shall be deemed to be comprised of separate \$5,000 denominations and such separate denominations shall be treated as separate Bonds which may be separately redeemed.

Section 3.5. Partial Redemption of Bonds. Upon surrender of any Bond to be redeemed in part only, the Paying Agent shall authenticate and deliver to the Owner a new Bond or Bonds of authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bond surrendered, with the same interest rate and the same maturity and of the same Series. Such partial redemption shall be valid upon payment of the amount required to be paid to such Owner, and the County shall be released and discharged thereupon from all liability to the extent of such payment.

Section 3.6. Notice of Redemption. The Paying Agent on behalf and at the expense of the County shall mail (by first class mail) notice of any redemption to the respective Owners of any Bonds designated for redemption at their respective addresses appearing on the Registration Books, at least 30 days (or other shorter period upon the consent of the Owners of any Bonds designed for redemption) but not more than sixty 60 days prior to the date fixed for redemption. Such notice shall state the date of the notice, the redemption date, the redemption place and the Redemption Price and shall designate the CUSIP numbers (if any) of the Bonds to be redeemed, the Bond numbers and the maturity or maturities (except in the event of redemption of all of the Bonds of such maturity or maturities in whole) of the Bonds to be redeemed, and shall require that such Bonds be then surrendered at the office of the Paying Agent for redemption at the Redemption Price, giving notice also that further interest on such Bonds will not accrue from and after the date fixed for redemption and with regard to optional redemption in the event that funds required to pay the redemption price are not on deposit under the Paying Agent Agreement at the time the notice of redemption is sent, a statement to the effect that the redemption is conditioned upon the receipt of the appropriate funds required to pay the redemption price by the Paying Agent on or prior to the redemption date. Neither the failure to receive any notice so mailed, nor any defect in such notice, shall affect the sufficiency of the proceedings for the redemption of the Bonds or the cessation of accrual of interest thereon from and after the date fixed for redemption. The County has the right to rescind any optional redemption from prepayments of unpaid assessments by written notice to the Paying Agent on or prior to the date fixed for redemption. Any notice of redemption shall be canceled and annulled if for any reason funds are not available on the date fixed for redemption for the payment in full

of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default hereunder. The Paying Agent shall mail notice of rescission of redemption in the same manner notice of redemption was originally provided.

If the Bonds are issued in book-entry form, notice shall also be provided to the Securities Depositories and the Information Services.

Section 3.7. Effect of Notice and Availability of Redemption Price. Notice of redemption having been duly given as aforesaid, and the amount necessary for the redemption having been made available for that purpose and being available therefor on the date fixed for such redemption: (1) the Bonds, or portions thereof, designated for redemption shall, on the date fixed for redemption, become due and payable at the redemption price thereof as provided in this County Indenture, anything in this County Indenture or in the Bonds to the contrary notwithstanding; (2) upon presentation and surrender thereof at the office of the Paying Agent, such Bonds shall be redeemed at the redemption price; (3) from and after the Redemption Date, the Bonds or portions thereof so designated for redemption shall be deemed to be no longer Outstanding and such Bonds or portions thereof shall cease to accrue interest; and (4) from and after the date fixed for redemption no Owner of any of the Bonds or portions thereof so designated for redemption shall be entitled to any of the benefits of this County Indenture or to any other rights, except with respect to payment of the redemption price and interest accrued to the Redemption Date from the amounts so made available.

## **ARTICLE IV**

### **FUNDS AND ACCOUNTS**

Section 4.1. Establishment of Funds and Accounts. The following funds and accounts are hereby created and established and shall be maintained by the Fiscal Agent for the administration and control of the proceeds of the Bonds, the Revenues and any related moneys:

(a) Los Angeles County Energy Program Contractual Assessment Limited Obligation Improvement Bonds Improvement Fund (the “Improvement Fund”), within which there shall be a separate account with appropriate designations for each Series of New Money Assessment Bonds;

(b) Los Angeles County Energy Program Contractual Assessment Limited Obligation Improvement Bonds Escrow Fund (the “Escrow Fund”), within which there shall be a separate account with appropriate designations for each Series of Refunding Assessment Bonds;

(c) Los Angeles County Energy Program Contractual Assessment Limited Obligation Improvement Bonds Debt Service Fund (the “Debt Service Fund”), within which there shall be established (A) the Assessment Payment Account (the “Assessment Payment Account”); and (B) the Assessment Prepayment Account (the “Assessment Prepayment Account”);

(d) Los Angeles County Energy Program Contractual Assessment Limited Obligation Improvement Bonds Reserve Fund (the “Assessment Bond Reserve Fund”); and

(e) Los Angeles County Energy Program Contractual Assessment Limited Obligation Improvement Bonds Costs of Issuance Fund (the “Costs of Issuance Fund”), within which there shall be a separate account with appropriate designations for each Series of Bonds.

The funds and accounts established herein may be subdivided into accounts and sub-accounts, as applicable, to perform the necessary rebate calculations or to administer the funds as provided in this County Indenture.

Section 4.2. Application of Proceeds of the Series A Bonds. On the Closing Date for the Series A Bonds, the proceeds of the sale of the Series A Bonds in the amount of \$\_\_\_\_\_ shall be paid to the Fiscal Agent and transferred or deposited by the Fiscal Agent as follows:

(a) \$\_\_\_\_\_ in the account within the Improvement Fund established for the Series A Bonds;

(b) \$\_\_\_\_\_ in the Assessment Bond Reserve Fund, constituting the full amount of the Assessment Bond Reserve Requirement; and

(c) \$\_\_\_\_\_ in the account within the Costs of Issuance Fund established for the Series A Bonds.

Section 4.3. Improvement Fund. The Fiscal Agent hereby agrees to maintain the Improvement Fund and the accounts therein, into which shall be deposited the balance of the proceeds of sale of the Bonds pursuant to Section 2.3, after making the deposits to the Escrow Fund required (if any) by Section 4.9, if any. The Fiscal Agent may establish in the Improvement Fund one or more accounts as it may deem necessary or convenient for the purpose of holding the proceeds of separate Series of Bonds. Moneys in the Improvement Fund or in any accounts therein shall be disbursed by the Fiscal Agent to the County in accordance with Section 4.2(a) hereof or as otherwise provided in a written request of the County provided to the Fiscal Agent.

Section 4.4. Debt Service Fund and Accounts. (a) The Fiscal Agent hereby agrees to maintain the Debt Service Fund (the “Debt Service Fund”) and the accounts therein until all payments of principal of and premium (if any) and interest on the Bonds have been made and all of the Bonds have been paid or redeemed. The Fiscal Agent shall establish within the Debt Service Fund an Assessment Payment Account and an Assessment Prepayment Account. All sums received by the County pursuant to the related Contractual Assessment in connection with the collection of Assessment Installments, including any redemption period interest and penalties thereon and the proceeds of the exercise of any of the remedies for delinquent payments available hereunder or under the 1913 Act or the 1915 Act, shall be deposited and held in the Assessment Payment Account of the Debt Service Fund relating to the Series of Bonds to which such Revenues are pledged as security.

(b) The Paying Agent shall make payments of interest and principal, respectively, due and payable with respect to Bonds from monies which shall be transferred to it by the Fiscal Agent on or before such date from the Assessment Payment Account of the Debt Service Fund on each Interest Payment Date and each Principal Payment Date. In the event of any deficiency in the Assessment Payment Account for payment of principal of and interest on

the Bonds, the Fiscal Agent shall, to the extent available, transfer amounts from the Assessment Bond Reserve Fund to the Assessment Payment Account or directly to the Paying Agent in accordance with Section 4.7 hereof for application first to the payment of interest on the Bonds, and then to the payment of principal due on such Bonds and then to the payment of principal due on such Bonds or any portion thereof called for redemption pursuant to Section 3.2 hereof.

On each September 2 beginning on the first Principal Payment Date, all monies in the Assessment Payment Account in excess of the amount necessary to make the payments of principal of and interest on the Bonds then due or overdue and payable on such date (assuming all Owners entitled to payment on or before such date take or have taken any and all actions necessary on their part to receive amounts due them) shall be applied as follows:

(i) first, the moneys shall be transferred to the Program Expense Fund (in which case such moneys shall be released from the pledge and lien hereunder), unless the Treasurer determines in his sole discretion that amounts then on deposit in the Program Expense Fund are sufficient to pay anticipated costs and expenses to be incurred by the County in connection with administration of LACEP for the next 12 months and anticipated costs and expenses to be incurred by the County, Paying Agent and the Fiscal Agent in connection with the Bonds for the next twelve (12) months, in which event the Treasurer may, but is not required to, apply such excess monies in accordance with paragraphs (ii) and (iii) below;

(ii) second, the remaining moneys shall be transferred to the Reserve Fund to the extent of any deficiency therein, for application in accordance with Section 4.7 hereof; and

(ii) third, any remaining moneys shall be transferred to the Assessment Prepayment Account of the Debt Service Fund for application to the redemption of the Bonds pursuant to Section 3.2 hereof.

(c) Amounts received from, or on behalf of, any property owner as prepayment under the applicable Assessment Contract shall be deposited by the Fiscal Agent in the Assessment Prepayment Account of the Debt Service Fund for application pursuant to Section 4.5(b) hereof. The Fiscal Agent shall deposit in the Assessment Prepayment Account amounts transferred to such account from the Assessment Bond Reserve Fund pursuant to Section 4.7 below. Amounts in the Assessment Prepayment Account shall be used to pay the principal of and redemption premium on Bonds the maturities of which shall have been advanced pursuant to Parts 11 or 11.1 of the 1915 Act, codified as Sections 8750 et seq. and 8760 et seq. of the California Streets and Highways Code. The Paying Agent, at the direction of the Treasurer if the Paying Agent is not the Treasurer, shall advance the maturity of and call Bonds for redemption pursuant to this County Indenture and the 1915 Act whenever and to the extent surplus monies are on deposit in the Assessment Prepayment Account sufficient to pay the principal of Bonds in integral \$5,000 amounts plus the redemption premium thereon. On or after each Redemption Date, or prior thereto with the consent of the Treasurer, upon presentation and surrender thereof, the Paying Agent shall pay the principal of and redemption premium on each Bond the maturity of which has been so advanced from the Assessment Prepayment Account. Interest accrued on each such Bond to the earlier of the payment date or Redemption Date shall be paid from monies transferred to the Paying Agent on or before such date by the Fiscal Agent from the Assessment Payment Account of the Debt Service Fund.

(d) If there is a surplus remaining in any account in the Debt Service Fund after payment of all Bonds and the interest thereon, plus applicable redemption premium (if any), that surplus shall be released from the pledge and lien hereof and transferred to the County to be used for the benefit of the LACEP.

Section 4.5. Assessment Prepayments. (a) The Bonds of a Series shall be prepaid to the extent any owner of assessed land may prepay the Assessment of an Assessment Contract.

(b) Upon prepayment of an Assessment pursuant to subsection (a) above, the Fiscal Agent shall deposit such payment in the Debt Service Fund for payment to Owners of the corresponding Bonds to be redeemed in accordance with Section 3.1. If notice of redemption is given in accordance with Section 3.6 hereof, the Bonds so advanced shall mature and become payable as set forth in Section 3.7 hereof.

Section 4.6. Costs of Issuance Fund. The Fiscal Agent hereby agrees to maintain the Costs of Issuance Fund and the accounts therein. The moneys in the Costs of Issuance Fund shall be used and withdrawn by the Fiscal Agent from time to time to pay the Costs of Issuance upon submission of a Disbursement Request of the County, substantially in the form of Exhibit B hereto, stating (a) the Person to whom payment is to be made, (b) the amount to be paid, (c) the purpose for which the obligation was incurred, (d) that such payment is a proper charge against the applicable account of the Costs of Issuance Fund, and (e) that such amounts have not been the subject of a prior disbursement from the applicable account of the Costs of Issuance Fund; in each case together with a statement or invoice for each amount requested thereunder. On or before 180 days following the issuance of a Series of Bonds, the Fiscal Agent shall transfer all amounts (if any) remaining in the Costs of Issuance Fund to the Debt Service Fund.

Section 4.7. Assessment Bond Reserve Fund. (a) The Fiscal Agent hereby agrees to maintain and hold in trust a special fund designated the "Assessment Bond Reserve Fund" until all payments of principal of and premium (if any) and interest on the Bonds have been made and all Bonds have been paid or redeemed. At the time of issuance of a Series of the Bonds, there shall be deposited in the Assessment Bond Reserve Fund an amount that will, together with amounts on deposit in the Assessment Bond Reserve Fund, equal the Assessment Bond Reserve Requirement. There shall be maintained in the Assessment Bond Reserve Fund an amount equal to the Assessment Bond Reserve Requirement. Additional deposits shall be made as provided in the 1915 Act and this County Indenture.

The County shall cause the Assessment Bond Reserve Fund to be administered in accordance with Part 16 of the 1915 Act; provided that proceeds from redemption or sale of properties, with respect to which payment of delinquent Assessments and interest thereon was made from the Assessment Bond Reserve Fund, shall be credited to the Assessment Bond Reserve Fund.

(b) Moneys in the Assessment Bond Reserve Fund shall be used solely for the purpose of paying the principal of and interest on the Bonds (i) in the event of early prepayment of assessments in an amount which shall equal the ratio of the total amount initially provided for

the Assessment Bond Reserve Fund to the total amount originally assessed in the proceedings for the Bonds said ratio multiplied by the amount of the prepayment, (ii) or in the event that the moneys in the Debt Service Fund are insufficient therefor, and the Fiscal Agent shall withdraw from the Assessment Bond Reserve Fund and deposit in the Debt Service Fund moneys necessary for such purpose.

(c) On each September 2, the Fiscal Agent shall transfer to the Assessment Bond Reserve Fund any excess amounts in the Assessment Payment Account of the Debt Service Fund pursuant to the second paragraph of Section 4.4(b). On each September 2 the Fiscal Agent shall, after making any transfer called for by the preceding sentence, determine whether amounts then on deposit in the Assessment Bond Reserve Fund are less than, equal to or exceed the Assessment Bond Reserve Requirement. Any such excess shall, to the extent permitted by law, be applied by the Fiscal Agent as follows:

(i) First, to the Assessment Payment Account of the Debt Service Fund to be applied to the payment of principal or interest due on the Bonds; and

(ii) Second, to the Assessment Prepayment Account of the Debt Service Fund for application to the redemption of Bonds pursuant to Section 3.2 hereof.

(d) Whenever, after the issuance of the Bonds, an Assessment is prepaid, in whole or in part, as provided in the 1915 Act, the Fiscal Agent, pursuant to a Written Request of the County, shall transfer from the Assessment Bond Reserve Fund to the Debt Service Fund an amount, specified in such Written Request, equal to the product of the ratio of the original amount of the Assessment so paid to the original amount of all unpaid Assessments, times the initial Assessment Bond Reserve Requirement; provided, however, no such transfer shall be made if after the transfer the amounts in the Assessment Bond Reserve Fund then remaining will not equal the Assessment Bond Reserve Requirement. The Fiscal Agent may conclusively rely upon the County's determination that the remaining funds equal the Assessment Bond Reserve Requirement.

(e) So long as no Event of Default shall have occurred and be continuing any amount in the Assessment Bond Reserve Fund in excess of the Assessment Bond Reserve Requirement on December 15 and June 15 of each year shall be withdrawn from the Assessment Bond Reserve Fund by the Fiscal Agent and shall be deposited in the Debt Service Fund.

(f) Whenever the balance in the Assessment Bond Reserve Fund is sufficient to retire all the Outstanding Bonds, whether by advance retirement or otherwise, collection of the principal and interest on the Assessments shall be discontinued and the Assessment Bond Reserve Fund liquidated by the Fiscal Agent in retirement of the Outstanding Bonds, as directed by a Written Request of the County. In the event that the balance in the Assessment Bond Reserve Fund at the time of liquidation exceeds the amount required to retire all of the Outstanding Bonds, the excess shall, after payment of amounts due to the Fiscal Agent, be transferred to the County to be used in accordance with the JPA Act and the 1915 Act.

(g) All amounts remaining in the Assessment Bond Reserve Fund in the year in which the last Assessments become due and payable shall be credited toward said

Assessments and transferred to the Debt Service Fund pursuant to a Written Request of the County.

(h) All or a portion of the Assessment Bond Reserve Requirement may be satisfied by the provision of one or more policies of municipal bond insurance or surety bonds issued by a municipal bond insurer or by a letter of credit issued by a bank, the obligations insured by which insurer or issued by which bank, as the case may be, having ratings at the time of issuance of such policy or surety bond or letter of credit equal to “AA” or higher assigned by Fitch or “Aa” or higher assigned by Moody’s or “AA” or higher assigned by Standard & Poor’s.

Section 4.8. Program Expense Fund. There has been heretofore established a fund within the Energy Fund called the Program Expense Fund and held by the County. There will be deposited in the Program Expense Fund (i) the amounts received by the Treasurer with respect to each parcel in each Fiscal Year in satisfaction of the Annual Administrative Assessment pursuant to the Assessment Contracts and (ii) the amounts, exclusive of Revenues, deducted from Assessments and set-aside to pay the costs and expenses[, up to a maximum of \$\_\_\_\_\_ in each Fiscal Year], incurred by the County in connection with the capitalized costs of establishing and administering LACEP. Amounts on deposit in the Program Expense Fund shall be used by the County to pay for ordinary and necessary costs of administering the levy and collection of the Assessments and all other administrative costs and incidental expenses related to the Series A Bonds, as well as the capitalized costs of establishing and administering LACEP. On each June 30, amounts in excess of the Annual Administrative Assessments expected to be incurred through the next succeeding September 2 may be applied as a credit upon the assessment levied for the upcoming fiscal year for Annual Administrative Assessments. Any surplus remaining in the Program Expense Fund after payment or provision for payment of all Administrative Expenses and other costs in connection with establishing and administering LACEP incurred or expected to be incurred through and including activities relating to the payment in full of the Bonds may be transferred to the County for the benefit of LACEP.

Section 4.9. Escrow Fund; Refunding Assessment Bonds. (a) The Fiscal Agent hereby agrees to maintain the Escrow Fund and the accounts therein, into which shall be deposited net proceeds of Refunding Assessment Bonds to be used to redeem Outstanding Prior Assessment Bonds.

(b) In accordance with Section 9.1 of this County Indenture, upon the issuance of any Series of Refunding Assessment Bonds, the County shall cause to be deposited with the Fiscal Agent in the applicable account of the Escrow Fund the following: (i) the then Outstanding principal amount of the Prior Assessment Bonds being refunded and defeased by such Series of Refunding Assessment Bonds, and (ii) interest accrued and unpaid on such Prior Assessment Bonds to the Redemption Date.

(c) Upon receipt of the moneys described in subsection (b) above, the Fiscal Agent shall pay such moneys to the Owners of the Prior Assessment Bonds for the equal and ratable benefit of such Owners. A Redemption Notice shall be provided by the Fiscal Agent to the Owners of the Prior Assessment Bonds in accordance with Section 3.6.

(d) The County and the Fiscal Agent represent and agree that, concurrently with the initial deposit of the moneys in the applicable account of the Escrow Fund pursuant to this Section 4.8, (i) the Prior Assessment Bonds will no longer be deemed to be Outstanding and unpaid within the meaning and with the effect expressed in Section 9.1 of this County Indenture, [and (ii) the related Authority Revenue Bonds of the Authority will no longer be deemed to be outstanding and unpaid within the meaning and with the effect expressed in the Authority Indenture].

(e) Monies remaining on deposit in any account of the Escrow Fund after payment of all amounts to the Owners of the applicable Series of Prior Assessment Bonds shall be released to the County for the benefit of the LACEP within five (5) Business Days after such payment to the Owners of the applicable Series of Prior Assessment Bonds,

Section 4.10. Investments. (a) Except for any escrow fund established hereunder (and the accounts therein), all moneys in any of the funds or accounts established pursuant to this County Indenture shall be invested by the Fiscal Agent solely in Authorized Investments. All moneys in any escrow fund established hereunder (and the accounts therein) shall be invested by the Fiscal Agent solely in Federal Securities. Obligations purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account. Moneys in the Debt Service Fund and the accounts therein shall be invested only in obligations which will by their terms mature on such dates as to ensure the timely payment of principal and interest on the corresponding Bonds as the same become due.

(b) All interest or gain derived from the investment of amounts in any of the funds or accounts hereunder shall be deposited in the fund or account from which such investment was made. The Fiscal Agent shall incur no liability for losses arising from any investments made pursuant to this Section.

(c) For the purpose of determining the amount in any fund or account hereunder, the value of investments credited to such fund or account shall be calculated at the cost thereof, excluding accrued interest and brokerage commissions, if any.

(d) The Fiscal Agent shall sell at the best price obtainable or present for redemption any obligations so purchased whenever it may be necessary to do so in order to provide moneys to meet any payment or transfer for such funds and accounts or from such funds and accounts. For the purpose of determining at any given time the balance in any fund or account, any such investments constituting a part of such fund and account shall be valued at their amortized cost.

## **ARTICLE V**

### **COVENANTS**

So long as any of the Bonds issued hereunder are outstanding, the County makes the following covenants with the Owners (to be performed by the County or its proper officers, agents or employees), which covenants are necessary, convenient and desirable to secure the

Bonds; provided, however, that said covenants do not require the County to expend any funds other than the Revenues.

Section 5.1. Compliance with Indenture. The County will faithfully observe and perform all of the conditions, covenants and requirements of this County Indenture required to be observed or performed by it.

Section 5.2. General. The County shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the County under the provisions of this County Indenture. The County warrants that upon the date of execution and delivery of the Bonds, all conditions, acts and things required by law and this County Indenture to exist, to have happened and to have been performed precedent to and in the execution and delivery of such Bonds do exist, have happened and have been performed and the execution and delivery of the Bonds shall comply in all respects with the applicable laws of the State.

Section 5.3. Punctual Payment. The County shall punctually pay or cause to be paid the principal, premium (if any) and interest to become due in respect of all the Bonds, in strict conformity with the terms of the Bonds and of this County Indenture, according to the true intent and meaning thereof, but only out of Revenues and other moneys pledged for such payment as provided in this County Indenture and received by the County or the Fiscal Agent hereunder.

Section 5.4. Extension of Payment of Bonds. The County shall not directly or indirectly extend the maturity dates of the Bonds or the time of payment of interest with respect thereto. Nothing herein shall be deemed to limit the right of the County to issue any securities for the purpose of providing funds for the redemption of the Bonds and such issuance shall not be deemed to constitute an extension of the maturity of the Bonds.

Section 5.5. Protection of Rights. The County will preserve and protect the security of the Bonds and the rights of the Owners against all claims and demands of all persons, and will faithfully perform and abide by all of the covenants, undertakings and provisions contained in this County Indenture or in any Bond issued pursuant to this County Indenture and will contest by court action or otherwise (a) the assertion by any officer of any government unit or any other person whatsoever against the County that (i) the 1915 Act or the Contractual Assessment Law is unconstitutional, (ii) the Assessments are invalid, or (iii) the Assessments cannot be applied by the County to pay debt service on the Bonds, or (b) any other action affecting the validity of the Bonds or diluting the security therefor.

Section 5.6. Against Encumbrances. The County will not encumber, pledge or place any charge or lien upon any of the Revenues or other amounts pledged to the Bonds superior to or on a parity with the pledge and lien herein created for the benefit of the Bonds, except as permitted by this County Indenture.

Section 5.7. Deferral of Assessments. The County will refrain from directly or indirectly extending or deferring the payment of any Assessment Installment.

Section 5.8. Accounting Records and Statements. The County will keep or cause to be kept proper accounting records in which complete and correct entries shall be made of all transactions relating to the receipt, deposit and disbursement of the Assessment Installments, and such accounting records shall be available for inspection upon five (5) business days' written notice by any Owner or such Owner's agent duly authorized in writing at reasonable hours and under reasonable conditions.

Section 5.9. Covenant to Foreclose. (a) The County will initiate procedures to determine or cause to be determined if any Assessment was not paid when due during the fiscal year ended the prior June 30. If any such assessment was not paid and if the balance in the Assessment Bond Reserve Fund is less than the Assessment Bond Reserve Requirement, the County shall, upon the written request of the Owners pursuant to Section 8.2(b) hereof, send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to the property owner, and if the delinquency remains uncured within 90 days of such notice, order and cause to be commenced, and thereafter prosecute to completion pursuant to Section 8830 et seq. of the California Streets and Highways Code, judicial foreclosure proceedings upon the lien of delinquent unpaid assessments as necessary or desirable to result in assessment revenues sufficient to pay any delinquent principal of or interest on the Bonds and satisfy the Assessment Bond Reserve Requirement. Upon the redemption or sale of the real property responsible for such delinquent Assessment Installments, or resale as provided below, the County shall deposit to the Assessment Bond Reserve Fund, the amount of any delinquency advanced therefrom to the Debt Service Fund for payment of interest on or principal of Bonds.

(b) In the event that real property with an Assessment is neither redeemed by the owner thereof nor sold to a third party purchaser at such foreclosure sale, the County may, but shall not be obligated to, cause a credit bid on behalf of and in the name of the County to be entered in the amount due the County and shall cause a sheriff's deed for said real property to be executed in the name of the County. The proceeds from any resale of such real property on which there is an Assessment shall be applied in the following order: (i) to make any past due payments of principal of or interest on the Bonds, (ii) to restore the Assessment Bond Reserve Fund to the Assessment Bond Reserve Requirement, (iii) to the payment of any continuing costs of the Bonds, and (iv) for the redemption of Bonds pursuant to Section 3.2 hereof with credit for such redemption credited pro rata against all Assessments.

(c) In the event that the Treasurer and the County make the determinations described in the Sections 8770-8772 of the 1915 Act in connection with the prospects of an ultimate loss accruing to the bondholders, the County, the Treasurer and the Fiscal Agent shall take the actions required by Sections 8770-8784 of said Act and Owners of Bonds shall be deemed to have consented to do such things as are required by such Sections of Owners of Bonds.

Section 5.10. Further Assurances. The County will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of its duties under this County Indenture, and for the better assuring and confirming unto the Owners of the Bonds the rights and benefits provided in this County Indenture.

## ARTICLE VI

### **PAYING AGENT AND FISCAL AGENT**

Section 6.1. Paying Agent and Fiscal Agent. The County hereby appoints the Treasurer of the County, or his designated agents, as the Paying Agent and the Auditor, or his designated agents, as the Fiscal Agent for the Bonds.

The Paying Agent is hereby authorized to and shall mail interest payments to the Owners, select Bonds for redemption, give notice of redemption and maintain the Bond Register. The Paying Agent is hereby authorized to and shall pay, from funds on deposit for such purposes hereunder, the principal of and premium, if any, on the Bonds when the same are duly presented to it for payment at maturity or on call and redemption, provide for the registration of transfer and exchange of Bonds presented to it for such purposes, provide for the cancellation of Bonds all as provided in this County Indenture, and provide for the authentication of Bonds, and shall perform all other duties assigned to or imposed on it as provided in this County Indenture. The Paying Agent shall keep accurate records of all Bonds paid and discharged by it.

The Fiscal Agent is also authorized to and shall maintain and administer funds and accounts established pursuant to Section 4.1 hereof. The Fiscal Agent shall keep accurate records of all funds administered by it. The County further authorizes and designates the Auditor to perform those functions of the Fiscal Agent set forth herein which, pursuant to the Contractual Assessment Law and the provisions incorporated therein by reference, are to be performed by the treasurer.

Each of the initially appointed Paying Agent and Fiscal Agent may contract with any third party to perform any or all of their obligations and duties under this County Indenture. The Paying Agent and Fiscal Agent may each be removed by the County and a successor or successors may be appointed. So long as any Bonds are Outstanding and unpaid, the Paying Agent, the Fiscal Agent and any successor or successors thereto designated by the County shall continue to be Paying Agent and Fiscal Agent, respectively, of the County for all of said purposes until the designation of a successor or successors.

Section 6.2. Liability of Paying Agent and Fiscal Agent. The recitals of fact and all promises, covenants and agreements contained herein and in the Bonds shall be taken as statements, promises, covenants and agreements of the County, and the Paying Agent and the Fiscal Agent assume no responsibility for the correctness of the same and makes no representations as to the validity or sufficiency of this County Indenture or of the Bonds, and shall incur no responsibility in respect thereof, other than in connection with its duties or obligations set forth herein or in the Bonds or in the certificate of authentication and registration assigned to or imposed upon the Paying Agent or the Fiscal Agent, as applicable. The Paying Agent shall be under no responsibility or duty with respect to the issuance of the Bonds for value. Neither the Paying Agent nor the Fiscal Agent shall be liable in connection with the performance of their respective duties hereunder, except for their respective negligence or default.

Section 6.3. Compensation. The County shall pay, from the Program Expense Fund, to the Fiscal Agent from time to time reasonable compensation for all services rendered under this County Indenture, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents, and employees, incurred in and about the performance of their powers and duties under this County Indenture. Other than funds on deposit in the Program Expense Fund, in no event shall the County be required to expend its own funds hereunder or under the Assessment Contracts.

## **ARTICLE VII**

### **SUPPLEMENTAL INDENTURES**

Section 7.1. Supplemental Indenture Without Owner Consent. The County may from time to time, and at any time, without notice to or consent of any of the Owners enter into such indentures or agreements supplemental hereto as shall not be inconsistent with the terms and provisions hereof (which supplemental indentures or agreements shall thereafter form a part hereof) for any of the following purposes:

(a) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provision with respect to matters or questions arising under this County Indenture or in any supplemental indenture, provided that such action shall not adversely affect the interests of the Owners;

(b) to add to the covenants and agreements of and the limitations and the restrictions upon the County contained in this County Indenture other covenants, agreements, limitations and restrictions to be observed by the County which are not contrary to or inconsistent with this County Indenture as theretofore in effect;

(c) to modify, alter, amend or supplement this County Indenture in any other respect which is not materially adverse to the interests of the Owners of Bonds Outstanding hereunder [and, in the opinion of Bond Counsel, is not materially adverse to the holders of the related Authority Bonds then Outstanding]; and

(d) to provide for the issuance of any Additional Bonds and to provide the terms of such Additional Bonds, subject to the conditions and upon compliance with the procedure set forth in Section 2.15 hereof.

Section 7.2. Supplemental Indentures with Owner Consent. Except as provided in Section 7.1, the Owners of not less than sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding [and the holders of not less than sixty percent (60%) in aggregate principal amount of the Authority Bonds then outstanding] shall have the right to consent to and approve the execution of such supplemental indentures as shall be deemed necessary or desirable for the purpose of waiving, modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this County Indenture or in any supplemental indenture or agreement; provided, however, that nothing herein shall permit, or be construed as permitting, (a) an extension of the scheduled date of the principal payment of any Bond, or the payment date of interest on, any Bond without the consent of the Owner of such

Bond, (b) a reduction in the principal amount of, or redemption price of, any Bond or the rate of interest thereon without the consent of the Owner of such Bond, (c) a reduction in the percentage of Bonds the Owners of which are required to consent to such supplemental indenture, without the consent of the Owners of all Bonds then Outstanding. Except as provided in Section 2.15 hereof, in no event may a modification or amendment provide for the issuance of additional bonds, notes or other evidences of indebtedness payable out of the Revenues.

Section 7.3. Notice of Supplemental Indenture to Owners. If at any time the parties hereto shall desire to enter into an indenture supplemental hereto, which pursuant to the terms of Section 7.2 shall require the consent of the Owners, the County shall cause notice of the proposed supplemental indenture to be mailed, postage prepaid, to all Owners at their addresses as they appear in the Registration Books. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that a copy thereof is on file at the office of the County for inspection by all Owners. The failure of any Owner to receive such notice shall not affect the validity of such supplemental indenture when consented to and approved as in Section 7.2 provided. Whenever at any time within one year after the date of the first mailing of such notice, the County shall receive an instrument or instruments purporting to be executed by the Owners of not less than sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding, which instrument or instruments shall refer to the proposed supplemental indenture described in such notice, and shall specifically consent to and approve it substantially in the form of the copy thereof referred to in such notice as on file with the County, such proposed supplemental indenture, when duly executed by the County, shall thereafter become a part of the proceedings for the issuance of the Bonds. In determining whether the Owners of the requisite aggregate principal amount of the Bonds have consented to the adoption of any supplemental indenture, Bonds which are owned by the County, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the County, shall be disregarded and shall be treated as though they were not Outstanding for the purpose of any such determination.

Upon the execution and delivery of any indenture supplemental hereto and the receipt of consent to any such supplemental indenture from the Owners of the appropriate aggregate principal amount of Bonds in instances where such consent is required, this County Indenture shall be, and shall be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this County Indenture of the County, the Fiscal Agent, the Payment Agent and all Owners of Bonds then Outstanding shall thereafter be determined, exercised and enforced hereunder, subject in all respects to such modifications and amendments.

## **ARTICLE VIII**

### **DEFAULT**

Section 8.1. Events of Default. Any one or more of the following events shall constitute an "Event of Default":

(a) Default in the due and punctual payment of the principal of or redemption premium, if any, on any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by declaration or otherwise;

(b) Default in the due and punctual payment of the interest on any Bond when and as the same shall become due and payable; or

(c) Default by the County in the observance of any of the agreements, conditions or covenants on its part in this County Indenture or in the Bonds contained (other than a payment default referred to in subparagraphs (a) and (b) above), and the continuation of such default for a period of 60 days after the County shall have been given notice in writing of such default by any Owner; provided that if within 60 days the County has commenced curing of the default and diligently pursues elimination thereof, such period shall be extended to permit such default to be eliminated.

Section 8.2. Remedies on Default. (a) If any installment of principal or interest on any Bond is not paid when due, the owner of such Bond shall have the right to exercise such rights and remedies as are provided to such owner under the Contractual Assessment Law or under other applicable law.

(b) In the event the County fails to take any action to eliminate an Event of Default under Section 8.1 hereof, the Owners of not less than sixty percent (60%) in aggregate principal amount of Outstanding Bonds [and the holders of not less than sixty percent (60%) in aggregate principal amount of the related series of Authority Revenue Bonds then outstanding] may institute any suit, action, mandamus or other proceeding in equity or at law for the protection or enforcement of any right under this County Indenture, but only if such Owners have first made written request of the County, after the right to exercise such powers or right of action shall have occurred, and shall have afforded the County a reasonable opportunity either to proceed to exercise the powers granted herein or granted under law or to institute such action, suit or proceeding in its name and unless also, the County shall have been offered reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the County shall have refused or neglected to comply with such request within a reasonable time. Any moneys recovered in such suit, action, mandamus or other proceedings shall be applied first to the payment of the reasonable costs and expenses of the Owners in bringing such suit, action, mandamus or other proceeding, including reasonable compensation to their agents and attorney.

(c) The principal of the Bonds shall not be subject to acceleration.

Section 8.3. Remedies Not Exclusive; Non-Waiver. No remedy conferred hereby upon any Owner is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by the 1915 Act, the Contractual Assessment Law, or any other law of the State. No waiver of any default or breach of duty or contract by any Owner shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies on said subsequent default or breach. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be

construed as a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Owners may be enforced and exercised as often as may be deemed expedient. In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and the Owner shall prevail, said Owner shall be entitled to receive reimbursement for reasonable costs, expenses, outlays and attorney's fees and should said suit, action or proceeding be abandoned, or be determined adversely to the Owners then, and in every such case, the County and the Owners shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

Section 8.4. Limited Liability of the County to the Owners; No Liability of the County. Except for the collection of the Revenues and the observance and performance of the other conditions, covenants and terms contained herein or in the 1915 Act or the Contractual Assessment Law required to be observed or performed by it, the County shall not have any obligation or liability to the Owners with respect to this County Indenture or the preparation, authentication, delivery, transfer, exchange or cancellation of the Bonds. The County has determined that no funds of the County will be available to pay principal of, premium, if any, or interest on the Bonds. The County has determined that pursuant to the Contractual Assessment Law, the County will not obligate itself to advance available funds from the County's treasury to cure any deficiency which may occur in the Debt Service Fund.

## **ARTICLE IX**

### **MISCELLANEOUS**

Section 9.1. Defeasance. If all Outstanding Bonds of a Series shall be paid and discharged in any one or more of the following ways:

(a) by paying or causing to be paid the principal of and interest with respect to all Bonds of such Series then Outstanding, as and when the same become due and payable;

(b) by depositing with the Fiscal Agent, at or before maturity, an amount which, together with the amounts then on deposit in the corresponding account of the Debt Service Fund, is fully sufficient to pay the principal of and redemption premium (if any) and interest on all Bonds of such Series then Outstanding as and when the same shall become due and payable or, in the event of redemption thereof, before their respective Maturity Dates; or

(c) by depositing with the Fiscal Agent Federal Securities in such amount as the County shall determine, as verified by a nationally recognized Independent Public Accountant, will, together with the interest to accrue thereon and moneys then on deposit in the corresponding account of the Debt Service Fund together with the interest to accrue thereon, be fully sufficient to pay and discharge the principal of, and premium (if any) and interest on all Bonds of such Series then Outstanding as and when the same shall become due and payable;

then, at the election of the County, and notwithstanding that any Bonds of such Series shall not have been surrendered for payment, all obligations of the County under this County Indenture with respect to all Outstanding Bonds of such Series shall cease and terminate, except for (i) the obligation of the Treasurer to pay or cause to be paid to the Owners of the Bonds of such Series

not so surrendered and paid, all sums due thereon, and (ii) the County's obligations under Section 5.3 [; provided that Authority Revenue Bonds issued by the Authority which are secured solely by payments to be made by the County pursuant to the related Bond shall have been paid as provided in the Authority Indenture]. Any funds held by the Fiscal Agent in such account of the Debt Service Fund, at the time of receipt of such notice from the County, which are not required for the purpose above mentioned, shall be transferred to the County to be used for the benefit of the LACEP.

Section 9.2. Cancellation of Bonds. All Bonds surrendered to the Fiscal Agent for payment upon maturity or redemption shall upon payment therefor be canceled immediately and forthwith transmitted to or upon the order of the County. All of the canceled Bonds shall be transferred to and shall remain in the custody of the Fiscal Agent until destroyed by the Fiscal Agent pursuant to due authorization.

Section 9.3. Execution of Documents and Proof of Ownership. Any request, direction, consent, revocation of consent, or other instrument in writing required or permitted by this County Indenture to be signed or executed by Owners may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Owners in person or by their attorneys appointed by an instrument in writing for that purpose, or by any bank, trust company or other depository for such Bonds. Proof of the execution of any such instrument, or of any instrument appointing any such attorney, and of the ownership of Bonds shall be sufficient for the purposes of this County Indenture (except as otherwise herein provided), if made in the following manner:

(a) The fact and date of the execution by any Owner or his or her attorney of any such instrument and of any instrument appointing any such attorney, may be proved by a signature guarantee of any bank or trust company located within the United States of America. Where any such instrument is executed by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such signature guarantee shall also constitute sufficient proof of his or her authority.

(b) As to any Bond, the person in whose name the same shall be registered in the Bond Register shall be deemed and regarded as the absolute Owner thereof for all purposes, and payment of or on account of the principal of any such Bond, and the interest thereon, shall be made only to or upon the order of the registered Owner thereof or his or her legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond and the interest thereon to the extent of the sum or sums so paid. The Fiscal Agent shall not be affected by any notice to the contrary.

Nothing in this County Indenture shall be construed as limiting the Fiscal Agent to such proof, it being intended that the Fiscal Agent may accept any other evidence of the matters herein stated which the Fiscal Agent may deem sufficient. Any request or consent of the Owner of any Bond shall bind every future Owner of the same Bond in respect of anything done or suffered to be done by the Fiscal Agent in pursuance of such request or consent.

Section 9.4. Provisions Constitute Contract. In consideration of the purchase and acceptance of any and all of the Bonds authorized to be issued hereunder by those who shall

hold the same from time to time, this County Indenture shall be deemed to be and shall constitute a contract between the County and the Owners from time to time of the Bonds; and the pledge made in this County Indenture and the covenants and agreements herein set forth to be performed on behalf of the County shall be for the equal benefit, protection and security of the owners of any and all of the Bonds, all of which, regardless of the time or times of their issuance, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof except as expressly provided in or permitted by this County Indenture.

Section 9.5. Payment on Business Day. In any case where the date of the maturity of interest or of principal (and premium, if any) of the Bonds or the date fixed for redemption of any Bonds or the date any action is to be taken pursuant to this County Indenture is other than a Business Day, the payment of interest or principal (and premium, if any) or the action need not be made on such date but may be made on the next succeeding day which is a Business Day with the same force and effect as if made on the date required and no interest shall accrue for the period after such date.

Section 9.6. Disqualified Bonds. In the event of a later transfer of the Bonds in accordance with Section 2.7 hereof, in determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this County Indenture, Bonds which are owned or held by or for the account of the County shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, provided, however, that for the purpose of determining whether the Fiscal Agent shall be protected in relying on any such demand, request, direction, consent or waiver, only Bonds which the Fiscal Agent knows to be so owned or held shall be disregarded.

Section 9.7. Severability. If any covenant, agreement or provision, or any portion thereof, contained in this County Indenture, or the application thereof to any person or circumstance, is held to be unconstitutional, invalid or unenforceable, the remainder of this County Indenture and the application of any such covenant, agreement or provision, or portion thereof, to other persons or circumstances, shall be deemed severable and shall not be affected thereby, and this County Indenture and the Bonds issued pursuant hereto shall remain valid and the Owners shall retain all valid rights and benefits accorded to them under this County Indenture and the Constitution and laws of the State.

Section 9.8. Notice. Any notice, demand, direction, request or other instrument authorized or required by this County Indenture to be given to or filed with the County, the Paying Agent or the Fiscal Agent shall be deemed to have been sufficiently given or filed for all purposes of this County Indenture if and when delivered to or sent by certified mail, return receipt requested to:

County: County of Los Angeles  
500 West Temple Street, Room 437  
Los Angeles, California  
Attention: Treasurer and Tax Collector

Paying Agent: County of Los Angeles  
500 West Temple Street, Room 437  
Los Angeles, California  
Attention: Treasurer and Tax Collector

Fiscal Agent: County of Los Angeles  
500 West Temple Street, Room 603  
Los Angeles, California  
Attention: Auditor-Controller

All documents received by the Fiscal Agent or the Paying Agent under the provisions of this County Indenture shall be retained in its possession, subject at all reasonable times to the inspection of the County, any Owner, and the agents and representatives thereof.

Section 9.9. No Personal Liability. The County and the officer, agent or employee thereof shall not be individually or personally liable for the payment of the principal of or interest on the Bonds; but nothing herein contained shall relieve any such entity, officer, agent or employee from the performance of any official duty provided by law.

Section 9.10. Employment of Agents by the County. In order to perform its duties and obligations hereunder, the County may employ such persons or entities as it deems necessary or advisable. The County shall not be liable for any of the acts or omissions of such persons or entities employed by it in good faith hereunder, and shall be entitled to rely, and shall be fully protected in doing so, upon the opinions, calculations, determinations and directions of such persons or entities.

Section 9.11. Counterparts. This County Indenture may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original; and such counterparts shall constitute but one and the same instrument.

Section 9.12. Headings. Any headings preceding the texts of the several Articles hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this County Indenture, nor shall they affect its meaning, construction or effect.

Section 9.13. Governing Law. All provisions of this County Indenture are to be governed by the laws of the State.

IN WITNESS WHEREOF, the parties have executed this County Indenture effective the date first above written.

COUNTY OF LOS ANGELES

By: \_\_\_\_\_  
Chair of the Board of Supervisors

ATTEST:

SACHI A. HAMAI  
Executive Officer  
of the Board of Supervisors

By: \_\_\_\_\_  
Deputy

TREASURER AND TAX COLLECTOR OF THE  
COUNTY OF LOS ANGELES

By: \_\_\_\_\_  
Mark J. Saladino

APPROVED AS TO FORM:

ANDREA SHERIDAN ORDIN  
COUNTY COUNSEL

By: \_\_\_\_\_  
Principal Deputy County Counsel

AUDITOR-CONTROLLER OF THE COUNTY  
OF LOS ANGELES

By: \_\_\_\_\_  
Wendy L. Watanabe

**EXHIBIT A**  
**FORM OF BOND**

*[Transfer of this Bond is subject to the restrictions set forth in the herein referenced Indenture.]*

*[If this Bond is issued in book-entry form only: then unless this Bond is presented by an authorized representative of DTC (as defined in the indenture) to the trustee for registration of transfer, exchange or payment, and any Bond executed and delivered is registered in the name of Cede & Co. Or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. Or to such other entity as is requested by an authorized representative of DTC), any transfer, pledge or other use hereof for value or otherwise by or to any person is wrongful inasmuch as the registered owner hereof, Cede & Co. has an interest herein.]*

United States of America  
State of California  
County of Los Angeles

NUMBER [1] \$ \_\_\_\_\_

COUNTY OF LOS ANGELES  
LOS ANGELES COUNTY ENERGY PROGRAM  
CONTRACTUAL ASSESSMENT LIMITED OBLIGATION IMPROVEMENT  
[REFUNDING] BOND  
SERIES \_\_\_\_ (TAXABLE)

MATURITY DATE      DATED DATE      INTEREST RATE      [CUSIP NUMBER]

REGISTERED OWNER:

PRINCIPAL AMOUNT:

Under and by virtue of Chapter 29 of Part 3 of Division 7 of the Streets and Highways Code of the State of California (the "Contractual Assessment Law") and the Improvement Bond Act of 1915, Division 10 (commencing with Section 8500) of the Streets and Highways Code (the "1915 Act"), the County of Los Angeles, State of California (the "County") hereby promises to pay (but only out of the Revenues as such term is defined in the Indenture, dated as of \_\_\_\_\_, 20\_\_ (the "Indenture") by and among the County, the Treasurer and Tax Collector of the County, as paying agent (the "Paying Agent") to the registered owner hereof or registered assigns (the "Owner"), and the Auditor-Controller of the County, as fiscal agent (the "Fiscal Agent") to the Owner, on the Maturity Date identified above, subject to any right of prior redemption hereinafter mentioned, the principal sum specified above in lawful money of the United States of America, and to pay interest thereon at a rate of interest determined pursuant to

Resolution No. \_\_\_\_ of the Board of Supervisors (the “Resolution of Issuance”), adopted on [May 25, 2010], in like money from the Interest Payment Date (as hereinafter defined) next preceding the date of authentication and registration of this Bond, unless this Bond is authenticated and registered (i) on an Interest Payment Date, in which event interest shall be payable from such date of authentication and registration, (ii) prior to an Interest Payment Date and after the close of business on the 15th day of the month immediately preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (iii) prior to the close of business on February 15, \_\_\_\_\_, in which event it shall bear interest from the Bond Date stated above, until payment of such principal sum shall have been discharged; provided, however, that if at the time of authentication of such Bond, interest is in default, interest on that Bond shall be payable from the last Interest Payment Date to which the interest has been paid or made available for payment.

The principal of this Bond shall be payable on the Maturity Date. Interest on this Bond shall be payable semiannually on March 2 and September 2 (each an “Interest Payment Date”) in each year commencing on \_\_\_\_\_. Principal of and interest on this Bond shall be paid by check of the Paying Agent mailed on or before the Interest Payment Date by first class mail, postage prepaid, or upon satisfaction of certain conditions specified in the Indenture, by wire transfer or any other method acceptable to the Owner, to the person whose name appears in the Registrations Books as the Owner of such Bond as of the 15<sup>th</sup> day of the calendar month immediately preceding each Interest Payment Date, to the address of that person on the Registration Books, provided that the payment of principal of the Bond on the Maturity Date and the payment of the principal of the Bond and any premium due upon the redemption thereof shall be payable upon presentation and surrender thereof at maturity or earlier redemption at the office of the Paying Agent in Los Angeles, California.

This Bond shall bear interest until the principal amount has been paid; provided, however, that if at the Maturity Date, or if at the redemption date of any principal amount of this Bond which has been duly called for redemption as provided in the Indenture, funds are available for the payment or redemption thereof in full accordance with the terms of the Indenture, such principal amount shall then cease to bear interest.

This Bond is subject to redemption as set forth in the Indenture.

This Bond is issued by the County under the Contractual Assessment Law, the 1915 Act and the Indenture for the purpose of funding disbursements under certain assessment contracts in connection with the Los Angeles County Energy Program established by the Board of Supervisors of the County pursuant to the Contractual Assessment Law. The obligation of the County to make payments of principal and interest on this Bond is a limited obligation secured only as set forth in the Indenture.

This Bond is secured by the Revenues, including the moneys in the Series \_\_\_\_\_ Account of the Debt Service Fund, and is payable exclusively out of such account. This Bond and interest thereon are not secured by any other funds of the County. Neither the credit nor the taxing power of the County is pledged for the payment of this Bond or the interest thereon, and no Owner of this Bond may compel the exercise of any taxing power by the County or force the forfeiture of any of its properties. The principal of, and premium (if any) and interest

on this Bond are not a debt of the County nor a legal or equitable pledge, charge, lien or encumbrance upon any of the properties of the County, or upon any of their income, receipts or revenues, other than the Revenues and the funds described in the Indenture.

This Bond is transferable by the Owner hereof, in person or by the Owner's attorney duly authorized in writing, at the office of the Paying Agent, subject to the terms and conditions provided in the Indenture, including the payment of certain charges, if any, upon exchange, transfer, surrender or cancellation of this Bond. Upon transfer, a new registered Bond or Bonds, of [any authorized denomination or denominations], of the same maturity, and for the same aggregate principal amount, will be issued to the transferee in exchange therefor.

The Paying Agent shall not be required to exchange or register the transfer of Bonds during the 15 days immediately preceding any Interest Payment Date or of any Bonds selected for redemption in advance of maturity.

The Paying Agent and the County may treat the Owner hereof as the absolute owner for all purposes, and the Paying Agent and the County shall not be affected by any notice to the contrary.

This Bond or any portion of it in the amount of \$5,000 or any integral multiple thereof, or in such other denomination or denominations as determined by the Treasurer in accordance with the Indenture, is subject to redemption and payment prior to maturity as set forth in the Indenture.

This Bond shall not be entitled to any benefit under the 1915 Act or the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon endorsed shall have been dated and signed by the Paying Agent.

[The remainder of this page is intentionally left blank.]

THE COUNTY HAS CERTIFIED, RECITED AND DECLARED that all things, conditions and acts required by the Constitution and laws of the State of California and the Indenture to exist, to have happened and to have been performed precedent to and in the execution, authentication and the delivery of this Bond, do exist, have happened and have been performed in due time, form and manner, as required by law and the Indenture.

IN WITNESS WHEREOF, the County has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signatures of its Treasurer and Executive Officer of the Clerk of the Board of Supervisors, all as of the dated date identified above.

\_\_\_\_\_  
Executive Officer Clerk of the Board of  
Supervisors of the County of Los Angeles

\_\_\_\_\_  
Treasurer and Tax Collector of the  
County of Los Angeles

**PAYING AGENT'S CERTIFICATE OF AUTHENTICATION**

This is one of the Bonds described in the within-mentioned Indenture which has been authenticated and registered on the \_\_ day of \_\_\_\_\_, 20\_\_.

**TREASURER AND TAX COLLECTOR OF THE  
COUNTY, as Paying Agent**

By: \_\_\_\_\_

[FORM OF ASSIGNMENT]

For value received the undersigned do(es) hereby sell, assign and transfer unto \_\_\_\_\_, whose tax identification number is \_\_\_\_\_, the within-mentioned registered Bond and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney to transfer the same on the books of the Fiscal Agent with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed:

NOTE: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

NOTICE. Signature must be guaranteed by a member of an institution which is a participant in the Securities Transfer Agent Medallion Program i STAMP or other similar program.

**EXHIBIT B**

**(LETTERHEAD OF THE APPLICABLE DEPARTMENT OF THE  
COUNTY OF LOS ANGELES)**

**PAYMENT REQUEST FORM**

Auditor-Controller, as Fiscal Agent  
500 West Temple Street, Room 603  
Los Angeles, CA 90012

SUBJECT: REQUEST FOR PAYMENT OF COSTS OF ISSUANCE  
COUNTY OF LOS ANGELES  
LOS ANGELES COUNTY ENERGY PROGRAM  
CONTRACTUAL ASSESSMENT LIMITED OBLIGATION IMPROVEMENT BONDS,  
SERIES \_\_

The Fiscal Agent is hereby requested to pay from the Costs of Issuance Fund established pursuant to the Indenture, dated as of \_\_\_\_\_ 1, 2010, executed by and among the County of Los Angeles, the Treasurer and Tax Collector of the County of Los Angeles, as Paying Agent, and the Auditor-Controller of the County of Los Angeles, as Fiscal Agent, to the person, corporation or other entity designated below as Payee, the sum set forth below such designation, in payment of the Costs of Issuance described below. The amount shown below is due and payable under a purchase order, contract or other authorization with respect to the Costs of Issuance described below and has not formed the basis of any prior request for payment.

Payee:

Address:

Amount: \$ \_\_\_\_\_

Description:

Description of Costs of Issuance or portion thereof accepted by the County of Los Angeles and authorized to be paid to the Payee.

Executed by the Authorized  
Representative of the County  
of Los Angeles

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Dated: \_\_\_\_\_

Title: \_\_\_\_\_

Payment Request No. \_\_\_\_\_

Attachment: (Attach duplicate original of Payee's statement(s) or invoice(s))

**EXHIBIT C**  
**SCHEDULE OF ASSESSMENT CONTRACTS**

**INDENTURE**

**Dated as of \_\_\_\_\_, 2010**

**by and among**

**LOS ANGELES COUNTY PUBLIC WORKS FINANCING AUTHORITY,**

**COUNTY OF LOS ANGELES, CALIFORNIA,**

**TREASURER AND TAX COLLECTOR OF THE COUNTY OF LOS ANGELES  
as the Paying Agent**

**and**

**AUDITOR-CONTROLLER OF THE COUNTY OF LOS ANGELES  
as the Fiscal Agent**

**\$ \_\_\_\_\_  
Los Angeles County Public Works Financing Authority  
Los Angeles County Energy Program  
Contractual Assessment Revenue Bonds, Series A**

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## INDENTURE

This INDENTURE (the “Indenture”), dated as of \_\_\_\_\_ 1, 2010, is executed by and among the County of Los Angeles (the “County”), a political subdivision of the State of California (the “State”), the Los Angeles County Public Works Financing Authority (the “Authority”), a joint exercise of powers entity formed by agreement under the Constitution and the laws of the State, the Treasurer and Tax Collector of the County, as paying agent (the “Paying Agent”) on behalf of the owners of the herein described Bonds, and the Auditor-Controller of the County, as fiscal agent (the “Fiscal Agent”) on behalf of the owners of the herein described Bonds.

WHEREAS, Chapter 29 of Part 3 of Division 7 of the Streets and Highways Code of the State of California (the “Contractual Assessment Law”) authorizes counties to assist free and willing property owners in financing the installation of distributed generation renewable energy sources and energy and water efficiency improvements (the “Improvements”) that are permanently fixed to residential, commercial, industrial or other real property through a contractual assessment program; and

WHEREAS, the Board of Supervisors (the “Board of Supervisors”) of the County, previously approved a resolution (the “Resolution of Intention”) declaring its intention to order the implementation of a contractual assessment program to finance the acquisition, construction and installation of the Improvements pursuant to the Contractual Assessment Law; and

WHEREAS, following notice duly given and a hearing in accordance with applicable law, the Board of Supervisors approved a resolution which, among other things, authorized the establishment of the Los Angeles County Energy Program (the “LACEP”) to finance the acquisition, construction and installation of the Improvements on properties in the County through the use of contractual assessments pursuant to the Contractual Assessment Law; and

WHEREAS, pursuant to LACEP, the County will enter into contractual assessment agreements (each, an “Assessment Contract”) with free and willing property owners (the “Property Owners”) pursuant to which the County will assist in financing the acquisition, construction and installation of Improvements on or in such owners’ respective properties and levy contractual assessments (each, an “Assessment”) on the applicable properties in the amounts set forth in the Assessment Contracts; and

WHEREAS, the Authority will issue Los Angeles County Energy Program Contractual Assessment Revenue Bonds (the “New Money Bonds”) from time to time in one or more series under and pursuant to the JPA Act and this Indenture for the purpose of funding loans (the “Loans”) to the County, which will disburse such amounts and any other moneys available therefor to free and willing property owners to finance the Improvements pursuant to LACEP; and

WHEREAS, the Authority may issue Los Angeles County Energy Program Contractual Assessment Revenue Refunding Bonds (the “Refunding Bonds” and, together with

the New Money Bonds, the “Bonds”) from time to time in one or more series under and pursuant to the JPA Act and this Indenture for the purpose of refinancing the bonds referenced above; and

WHEREAS, in order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured, and to secure the payment of the principal thereof and premium, if any, and interest thereon, the County and the Authority have authorized the execution and delivery of this Indenture; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Indenture do exist, have happened and have been performed in due time, form, and manner as required by law, and the parties hereto are duly authorized to execute and enter into this Indenture;

NOW, THEREFORE, in consideration of the covenants and provisions herein set forth and for other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

## ARTICLE I

### **DEFINITIONS; RULES OF CONSTRUCTION; AUTHORIZATION AND PURPOSE OF BONDS**

Section 1.1. Definitions. Unless the context otherwise requires, the following terms shall have the following meanings for purposes of this Indenture:

“1913 Act” means The Municipal Improvement Act of 1913, being Division 12 of the Streets and Highways Code of the State.

“1915 Act” means The Improvement Bond Act of 1915, being Division 10 of the Streets and Highways Code of the State.

“Additional Bonds” means one or more series of bonds issued pursuant to this Indenture subsequent to the issuance of the Series A Bonds.

“Administrative Expenses” means (i) the ordinary and necessary costs of administering the levy and collection of the Assessments and all other administrative costs and incidental expenses related to the Bonds, including, but not limited to, any annual audit fees, Paying Agent fees, Fiscal Agent fees and such other costs as are paid or payable from amounts collected pursuant to Sections 8682, 8682.1 or 10312 of the California Streets and Highway Code and (ii) capitalized costs of establishing and administering LACEP.

“Annual Administrative Assessment” means the annual assessment levied against the properties of owners participating in LACEP to pay the ordinary and necessary costs incurred by the County in connection with the administration and collection of the Assessments, from the administration or registration of any associated bonds, including the Bonds, securities or other financing arrangements, and from the administration of the Reserve Fund or other related funds.

“Assessment Contracts” means, as to each Loan, the agreements by and between the County and free and willing property owners participating in LACEP and identified in Exhibit B to the related Loan Agreement, pursuant to which the County agrees to provide financing to such property owners for the acquisition, construction and installation of Improvements to such owners’ properties.

“Assessment Installments” means, as to each Loan, the installments of principal, interest and premium, if any, to be paid on the unpaid Assessments by certain property owners pursuant to the terms of the related Assessment Contracts. The term “Assessment Installments” does not include the Annual Administrative Assessment.

“Assessment Revenues” means, as to each Loan, the revenues received by the County in each Fiscal Year from the collection of the annual Assessment Installments, including any interest and penalties thereon and the proceeds of the exercise of any of the remedies for delinquent payments available under the related Assessment Contracts or under the Contractual Assessment Law.

“Assessments” means, as to each Loan, the unpaid assessments levied by the County pursuant to the Contractual Assessment Law and the related Assessment Contracts constituting a first lien and charge upon certain real properties in the County.

“Auditor” means the Auditor-Controller of the County.

“Authority” means the Los Angeles County Public Works Financing Authority created pursuant to the JPA Act, together with its successors and assigns.

“Authority Board” means the Board of Directors of the Authority.

“Authorized Investment” means any legal investment of Authority funds.

“Authorized Representative of the Authority” means the Treasurer of the Authority and any other person designated by such officers or authorized to act on behalf of the Authority under or with respect to this Indenture and all other agreements related hereto.

“Authorized Representative of the County” means the Treasurer, the Auditor, the Program Administrator or any other person designated by such officers and authorized to act on behalf of the County under or with respect to this Indenture and all other agreements related hereto.

“Authority Treasurer” means the Treasurer of the Authority.

“Board of Supervisors” means the Board of Supervisors of the County.

“Bond Date” means the dated date of the Bonds, which shall be the Closing Date.

“Bonds” means the contractual assessment revenue bonds authorized by and at any time Outstanding pursuant to the provisions of this Indenture and as designated pursuant to Section 2.3 hereof, including the Series A Bonds and any Additional Bonds.

“Business Day” means any day other than (i) a Saturday or a Sunday, (ii) a day on which banking institutions in the State or the Federal Reserve System are authorized or obligated by law or executive order to be closed, or (iii) a day on which the County offices are closed on account of an official holiday recognized by the County.

“Closing Date” means, with respect to each Series of Bonds the date of initial delivery of such Series of Bonds.

“Contractual Assessment Law” means Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code, commencing with Section 5898.10, and all laws amendatory thereof or supplemental thereto.

“Costs of Issuance” means all of the costs of issuing the Bonds, including, but not limited to, all printing and document preparation expenses in connection with this Indenture, the Bonds and any and all other agreements, instruments, certificates or other documents issued in connection therewith; legal fees and expenses of counsel with respect to the issuance of the Bonds; fees and expenses of the financial advisor with respect to the issuance of the Bonds; underwriters’ fees; the initial fees and expenses of the Fiscal Agent and the Paying Agent, if any (including without limitation, origination fees and first annual fees payable in advance); and other fees and expenses incurred in connection with the issuance of the Bonds or the implementation of the financing for the Loans to the extent such fees and expenses are approved by the Authority.

“County” means the County of Los Angeles, a political subdivision of the State.

“Debt Service Fund” means the fund created and established pursuant to Section 4.1 hereof.

“DTC” means The Depository Trust Company in New York, New York.

“Energy Fund” means the Energy Fund established pursuant to Resolution No. \_\_\_\_\_ of the Board of Supervisors, adopted on May 25, 2010.

“Escrow Fund” means the fund by that name created and established pursuant to Section 4.1 hereof.

“Event of Default” means any occurrence or event specified in and defined by Section 8.1 hereof.

“Federal Securities” means any of the following which at the time of investment are legal investments under the laws of the State of California for the funds proposed to be invested therein: (a) direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America); and (b) obligations of any agency, department or instrumentality of the United States of America the timely payment of principal of and interest on which are fully guaranteed by the United States of America.

“Fiscal Agent” means (i) the Auditor or his designated agent or (ii) any bank, trust company, national banking association or other financial institution appointed as fiscal agent for the Bonds in the manner provided in this Indenture.

“Fiscal Year” means any twelve-month period extending from July 1st in one calendar year to June 30th of the succeeding calendar year, both dates inclusive, or any other twelve-month period selected and designated by the Authority as its official fiscal year period.

“Improvements” means the qualifying distributed generation renewable energy sources and energy and water efficiency improvements acquired, constructed and/or installed on or in properties in the County under LACEP and the related Assessment Contracts.

“Indenture” means this Indenture, dated as of \_\_\_\_\_ 1, 2010, by and among the County, the Authority, the Paying Agent and the Fiscal Agent, as amended or supplemented pursuant to the terms hereof.

“Independent Public Accountant” means any certified public accountant or firm of certified public accountants appointed and paid by the Authority or the County who, or each of whom (i) is in fact independent and not under domination of the Authority or the County; (ii) does not have any substantial interest, direct or indirect, in the Authority or the County; and (iii) is not connected with the Authority or the County as an officer or employee of the Authority or the County but who may be regularly retained to make annual or other audits of the books of, or reports to, the Authority or the County.

“Information Services” means Financial Information, Inc.’s “Daily Called Bond Services,” 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; Moody’s Investors Service “Municipal and Government,” 99 Church Street, 8th Floor, New York, New York 10007, Attention: Municipal News Reports; Kenny S&P, “Notification Department,” 55 Water Street, 45th Floor, New York, New York 10041; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to the Bonds to be redeemed as the County may designate in a Written Request of the Authority filed with the Fiscal Agent.

“Interest Payment Date” means, with respect to any Bond, March 2 and September 2 in each year, beginning on March 2 in the year immediately succeeding the August deadline by which the Assessments of the applicable Assessment Contracts have been enrolled on the County tax roll, and continuing thereafter so long as any Bonds remain Outstanding.

“JPA Act” means the Joint Exercise of Powers Act (being Chapter 5 of Division 7 of Title 1 of the Government Code of the State, as amended) and all laws amendatory thereof or supplementing thereto.

“LACEP” means the Los Angeles County Energy Program established pursuant to Resolution No. \_\_\_\_\_ of the Board of Supervisors, adopted on [May 25, 2010] under the Contractual Assessment Law.

“Loan” means each loan of proceeds of Bonds by the Authority to the County pursuant to the terms of the related Loan Agreement for purposes of financing Improvements in accordance with LACEP and the related Assessment Contracts.

“Loan Agreement” means each Loan Agreement between the Authority, as lender, and the County, as borrower, with respect to each Series of Bonds, as originally executed and as may be amended or supplemented from time to time in accordance with the terms thereof.

“Loan Fund” means the fund by that name established and held by the Fiscal Agent pursuant to Section 4.1 hereof.

“Loan Payment Account” means the account by that name established and held by the Fiscal Agent pursuant to Section 4.1 hereof with respect to each Series of Bonds issued hereunder.

“Loan Prepayment Account” means the account by that name established and held by the Fiscal Agent pursuant to Section 4.1 hereof with respect to each Series of Bonds issued hereunder.

“Maturity Date” means the date specified in any Bond on which the principal of such Bond becomes due and payable.

“New Money Bonds” means Bonds issued to finance Improvements in accordance with LACEP and the related Assessment Contracts.

“Outstanding” means, subject to the provisions of Section 9.6 hereof, all Bonds theretofore or thereupon being authenticated and delivered by the Paying Agent under this Indenture except:

- (1) Bonds theretofore canceled by the Paying Agent or surrendered to the Paying Agent for cancellation;
- (2) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Paying Agent pursuant to this Indenture;
- (3) From and after the date fixed for redemption, Bonds or portions thereof designated for redemption for which notice of redemption has been duly given and the amount necessary for redemption has been made available for that purpose; and
- (4) Bonds for the payment or redemption of which funds or eligible securities in the necessary amount shall have theretofore been deposited with the Fiscal Agent in accordance with Section 9.1 hereof (whether on or prior to the maturity or Redemption Date of such Bonds).

“Owner” when used with respect to any Bond, means the person in whose name the ownership of such Bond is registered on the Registration Books maintained by the Fiscal Agent.

“Paying Agent” means the Treasurer and its designated agents, any third party contractor serving as Paying Agent, and their successors or assigns, acting in the capacity of registrar, paying agent and transfer agent. The Treasurer is authorized to contract with any third party to perform the services of Paying Agent under this Indenture.

“Principal Payment Date” means September 2 of each year, commencing September 2, 20\_\_ with respect to the Series A Bonds.

“Prior Bonds” means any or all (as the context may require) Series of Bonds designated for refunding with proceeds of a Series of Refunding Bonds.

“Prior Loan” means the loan or loans relating to the Prior Bonds.

“Prior Loan Agreement” means the loan agreement pursuant to which the Authority loaned proceeds of the Prior Bonds to the County.

“Program Administrator” means the Director of the Internal Services Department of the County, pursuant to the Resolution of Intention, or any designee of such officer.

“Program Expense Fund” means the fund by that name and established in the Energy Fund held by the County in connection with the Annual Administrative Assessment and other amounts received for payment of Administrative Expenses and administered pursuant to the Loan Agreement.

“Record Date” means, with respect to any Interest Payment Date, the fifteenth day of the calendar month immediately preceding the applicable Interest Payment Date, whether or not such day is a Business Day.

“Redemption Date” means, with respect to any Bonds, the date on which such Bonds have been called for redemption pursuant to Section 3.1 or Section 3.2 of this Indenture prior to their Maturity Date.

“Redemption Notice” has the meaning provided in Section 3.6 hereof.

“Refunding Bonds” means Bonds issued to finance the refunding of bonds outstanding under this Indenture or other issuance instrument and secured by loan proceeds derived from payments of Assessments.

“Registration Books” means the records maintained by the Paying Agent pursuant to Section 2.9 hereof for the registration and transfer of ownership of the Bonds.

“Representation Letter” means the Blanket Letter of Representations delivered upon or prior to the issuance of the Bonds to DTC by the Authority.

“Reserve Fund” means the fund created and established pursuant to Section 4.1(d) hereof.

“Reserve Requirement” means, as of the date of any calculation, which calculation shall be made by the Fiscal Agent, an amount equal to the least of (i) \_\_\_\_\_ or (ii) 10 percent of the total amount of Assessments relating to the Bonds hereunder. The Reserve Requirement shall be calculated upon each Loan prepayment pursuant to Section [3.2] in connection a payment or prepayment of an Assessment pursuant to Section 8881 and Section 8884 of the 1915 Act.

“Resolution of Intention” means Resolution No. \_\_\_\_\_ of the Board of Supervisors adopted on April 6, 2010.

“Resolution Establishing LACEP” means Resolution No. \_\_\_\_\_ of the Board of Supervisors adopted on May 25, 2010.

“Revenues” means (a) all amounts paid by the County to the Authority or the Fiscal Agent pursuant to the applicable Loan Agreement other than administrative fees and expenses and indemnity against claims payable to the Authority and the Fiscal Agent, (b) all moneys deposited and held from time to time by the Fiscal Agent in the corresponding account of the Debt Service Fund established hereunder with respect to the Bonds, and (c) investment income with respect to any moneys held by the Fiscal Agent in the corresponding account of the Debt Service Fund established hereunder with respect to the Bonds.

“Securities Depository” means The Depository Trust Company, 55 Water Street, 50th Floor, New York, N.Y. 10041-0099 Attn. Call Notification Department, Fax (212) 855 7232, or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other securities depositories, or no such depositories, as the County may indicate in a Written Request of the Authority delivered to the Paying Agent.

“Series” means each Series of Bonds issued and designated pursuant to and in accordance with Section 2.1, Section 2.3 or Section 2.15 hereof.

“Series A Bonds” means the Authority’s Los Angeles County Energy Program Contractual Assessment Revenue Bonds, Series A.

“State” means the State of California.

“Supplemental Indenture” means any indenture adopted by the parties hereto amendatory of or supplemental to this Indenture.

“Treasurer” means the Treasurer and Tax Collector of the County.

“Written Request of the Authority” means a request in writing signed by an Authorized Representative of the Authority.

Section 1.2. Rules of Construction. All references in this Indenture to “Sections,” and other subdivisions, unless indicated otherwise, are to the corresponding Sections or subdivisions of this Indenture; and the words “herein,” “hereof,” “hereunder,” and other words of similar import refer to this Indenture as a whole and not to any particular Section or subdivision hereof.

Section 1.3. Authorization and Purpose of Bonds. The Authority Board has reviewed all proceedings heretofore taken relative to the authorization of the Bonds and has found, as a result of such review, and hereby finds and determines that all things, conditions and acts required by law to exist, happen and be performed precedent to and in the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Authority is now authorized, pursuant to each and every requirement of law, to issue the Bonds in the manner and form as in this Indenture provided. The Authority Board hereby authorizes the issuance of the Bonds pursuant to the JPA Act and this Indenture for the purpose of providing funds to make the Loans to the County to make disbursements pursuant to the Assessment Contracts to property owners for the cost of Improvements.

## **ARTICLE II**

### **THE BONDS**

Section 2.1. Authorization and Purpose of Bonds; Equality of Bonds; Pledge; Limited Liability

(a) The Authority is hereby authorized and directed to execute, and the Fiscal Agent is hereby authorized and directed upon written request of an Authorized Representative of the Authority to authenticate and deliver the Bonds. The Authority may authorize the execution, authentication and delivery of Additional Bonds at any time after the execution, authentication and delivery of the Bonds only as provided in Section 2.15 hereof, which Additional Bonds shall contain such additional designation as may be determined by the Authority, including the designation of Refunding Bonds, as appropriate. The Bonds may be issued in book-entry form or certificate form.

(b) The Authority hereby pledges and assigns to the Paying Agent and the Fiscal Agent, as applicable, in trust for the protection and security of the Owners, all of its right, title and interest in the Revenues, including the payments derived from Assessment Installments and any foreclosure proceedings relating thereto, for the payment of principal of, premium (if any) and interest on the Bonds. The Bonds shall be and are equally secured by a pledge of and lien upon the Revenues.

(c) The Bonds and interest thereon are not payable from the general funds of the Authority or the County. Neither the credit of the County or the Authority nor the taxing power of the County is pledged for the payment of the Bonds or the interest thereon, and no Owner of the Bonds may compel the exercise of any taxing power by the County or force the forfeiture of any of its property. The principal of, and premium (if any) and interest on the Bonds are not a debt of the County nor a legal or equitable pledge, charge, lien or encumbrance upon any of the property of the Authority or the County, or upon any of their income, receipts or revenues, other than the Revenues.

Section 2.2. Collection of Assessments. (a) The Assessment Installments shall be payable as provided in the Assessment Contracts and shall be payable in the same manner and at the same time and in the same installments as general taxes on real property are payable, and become delinquent at the same times and in the same proportionate amounts and bear the same

proportionate penalties and interest after delinquency as do general taxes on real property. Nothing in this Indenture or in any Supplemental Indenture shall preclude the redemption prior to maturity of any Bonds or the payment of the Bonds from proceeds of refunding bonds issued under any law of the State.

(b) Except for the collection of the Assessment Installments and the observance and performance of the other conditions, covenants and terms contained herein or in the 1915 Act or the Contractual Assessment Law required to be observed or performed by it, the County shall not have any obligation or liability to the Owners with respect to this Indenture or the Bonds.

Section 2.3. Issuance of Series A Bonds; Description of Series A Bonds. (a) The Series A Bonds shall consist of such Bonds designated generally as “Los Angeles County Public Works Financing Authority Los Angeles County Energy Program Contractual Assessment Revenue Bonds, Series A”. Series A Bonds in the aggregate principal amount not to exceed \$\_\_\_\_\_ shall be issued for the purposes of funding one or more Loans to the County, which will disburse such amounts and any other moneys available therefor to free and willing property owners to finance the Improvements pursuant to LACEP.

(b) The Series A Bonds may be issued in one or more subseries, with the principal amount of each subseries of Series A Bonds to be determined by the Treasurer.

(c) Each Series of Bonds shall bear a series designation as determined by the Authority.

(d) The Series A Bonds shall be issued only in fully registered form without coupons in the denomination of \$5,000 or any integral multiple thereof, or in such other denomination or denominations as determined by the Authority. The Series A Bonds shall be dated as of their date of delivery and shall mature and be payable on September 2 in the years and in the principal amounts and shall bear interest as set forth below:

**Los Angeles County Energy Program  
Contractual Assessment Revenue Bonds, Series A**

<b>Maturity Date (September 2)</b>	<b>Principal Amount</b>	<b>Interest Rate</b>
	\$	

The interest rate for the Series A Bonds shall be calculated on the basis of a 360-day year of twelve 30-day months.

(e) If the Series A Bonds are issued in book-entry form, the Series A Bonds shall be initially registered in the name of “Cede & Co.,” as nominee of DTC. If the Series A Bonds are issued in certificate form, the Series A Bonds shall be initially registered pursuant to Section 2.5 hereof. The Series A Bonds shall be evidenced by a single fully registered bond in the principal amount of the Series A Bonds.

Section 2.4. Medium and Payment. Principal of, and premium (if any) and interest on the Bonds shall be payable in lawful money of the United States of America. The principal of each Series of Bonds shall be payable on the respective Maturity Date set forth in the applicable Bonds. Interest with respect to each Bond shall accrue from the respective Bond Date. Interest on any Bond shall be payable from the Interest Payment Date next preceding the date of authentication of that Bond, unless (i) such date of authentication is an Interest Payment Date, in which event interest shall be payable from such date of authentication, (ii) the date of authentication is after a Record Date but prior to the immediately succeeding Interest Payment Date, in which event interest shall be payable from such Interest Payment Date, or (iii) the date of authentication is prior to the close of business on the first Record Date, in which event interest shall be payable from the Bond Date; provided, however, that if at the time of authentication of such Bond, interest is in default, interest on that Bond shall be payable from the last Interest Payment Date to which the interest has been paid or made available for payment.

Principal of and interest on any Bond shall be paid by check of the Paying Agent mailed on or before the Interest Payment Date by first class mail, postage prepaid, to the person whose name appears in the Registration Books as the Owner of such Bond as of the close of business on the Record Date, to the address that appears on the Registration Books, provided that the payment of principal of the Bonds on the final Maturity Date and the payment of the principal of the Bonds and any premium due upon the redemption thereof shall be payable upon presentation and surrender thereof at maturity or earlier redemption at the office of the Paying Agent. In addition, upon a request in writing received by the Paying Agent on or before the applicable Record Date from an Owner of \$1,000,000 or more in principal amount of the Bonds payment shall be made on the Interest Payment Date by wire transfer in immediately available funds to an account designated by such Owner.

Each Bond shall bear interest until its principal sum has been paid; provided, however, that if at the Maturity Date of any Bond, or if at the Redemption Date of any Bond which has been duly called for redemption as herein provided, funds are available for the payment or redemption thereof in full accordance with the terms of this Indenture, the Bond shall then cease to bear interest.

Section 2.5. Form of Bonds and Certificate of Authentication and Registration. The Bonds shall be initially issued in the form of a fully registered bond or bonds registered in the name of the purchaser thereof. The form of the Bond, the form of the certificate of authentication and the form of registration thereon shall be substantially in the form attached hereto as Exhibit A and incorporated herein by this reference, with any necessary or appropriate variations, omissions and insertions as permitted or required hereunder. The Bonds may be printed, lithographed or typewritten and may contain such reference to any of the provisions of this Indenture as may be appropriate.

Section 2.6. Execution and Authentication. The Bonds shall be executed by the manual or facsimile signature of the Chair of the Authority and attested by the manual or facsimile signature of the Treasurer of the Authority. In case any one or more of the officers who shall have signed any of the Bonds shall cease to be such officer before the Bonds so signed have been authenticated and delivered by the Paying Agent (including new Bonds delivered pursuant to the provisions hereof with reference to the transfer and exchange of Bonds or to lost, stolen, destroyed or mutilated Bonds), such Bonds may, nevertheless, be authenticated and delivered as herein provided, and may be issued as if the persons who signed such Bonds had not ceased to hold such offices.

The Bonds shall bear thereon a certificate of authentication and registration, in the form set forth in Exhibit A hereto, executed by the manual signature of the Paying Agent. Only such Bonds as shall bear thereon such certificate of authentication and registration shall be entitled to any right or benefit under this Indenture, and no Bond shall be valid or obligatory for any purpose until such certificate of authentication and registration shall have been duly executed by the Paying Agent.

Section 2.7. Registration of Exchange or Transfer. The registration of any Bond may, in accordance with its terms, be transferred upon the Registration Books by the person in whose name it is registered, in person or by his or her duly authorized attorney, upon surrender of such Bond for cancellation at the office of the Paying Agent, accompanied by delivery of a written instrument of transfer in a form acceptable to the Paying Agent and duly executed by the Owner or his or her duly authorized attorney. Bonds may be exchanged at the office of the Paying Agent for a like aggregate principal amount of Bonds of authorized denominations. The Authority and the Paying Agent will not charge for any new Bond issued upon any exchange, but may require the Owner requesting such transfer or exchange to pay any tax or other governmental charge required to be paid with respect to such transfer or exchange. Whenever any Bond or Bonds shall be surrendered for registration of transfer or exchange, the Paying Agent shall authenticate and deliver a new Bond or Bonds; provided that the Paying Agent shall not be required to register transfers or make exchanges during the 15 days immediately preceding any Interest Payment Date, and, of (i) Bonds for a period of 15 days next preceding the date of any selection of Bonds to be redeemed, or (ii) any Bonds chosen for redemption.

Section 2.8. Mutilated, Lost, Destroyed or Stolen Bonds. If any Bond shall become mutilated, the Chair of the Authority, at the expense of the Owner of such Bond, shall execute, and the Paying Agent shall thereupon authenticate and deliver a new Bond of like Series, tenor, date, maturity and aggregate principal amount in authorized denomination in exchange and substitution for the Bond so mutilated, but only upon surrender to the Paying Agent of the Bond so mutilated. Every mutilated Bond so surrendered to the Paying Agent shall be cancelled and destroyed. If any Bond issued hereunder shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Paying Agent and, if such evidence is satisfactory to the Paying Agent and indemnity satisfactory to the Paying Agent shall be given, the Chair of the Authority, at the expense of the Owner, shall execute, the Paying Agent shall thereupon authenticate and deliver, a new Bond of like Series, tenor and maturity numbered and dated as the Paying Agent shall determine in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond shall have matured or shall have been

called for redemption, instead of issuing a substitute Bond the Paying Agent may pay the same without surrender thereof upon receipt of indemnity satisfactory to the Fiscal Agent). The Paying Agent may require payment of a reasonable fee for each new Bond issued under this Section 2.8 and of the expenses which may be incurred by the Authority and the Paying Agent. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to have been lost, destroyed or stolen shall be equally and proportionately entitled to the benefits hereof with all other Bonds secured hereby. The Paying Agent shall not treat both the original Bond and any replacement Bond as being Outstanding for the purpose of determining the principal amount of Bonds which may be executed, authenticated and delivered hereunder, but both the original and replacement Bond shall be treated as one and the same.

Section 2.9. Registration Books. The Paying Agent will keep or cause to be kept, at its principal office, sufficient books for the registration and transfer of the Bonds, and, upon presentation for such purpose, the Paying Agent shall, under such reasonable regulations as he or she may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books, Bonds as herein provided.

The Authority and the Paying Agent may treat the Owner of any Bond whose name appears on the Registration Books as the absolute Owner of such Bond for any and all purposes, and the Authority and the Paying Agent shall not be affected by any notice to the contrary. The Authority and the Paying Agent may rely on the address of the Owner as it appears in the Registration Books for any and all purposes. It shall be the duty of each Owner to give written notice to the Authority and the Paying Agent of any change in such Owner's address so that the Registration Books may be revised accordingly.

Section 2.10. Special Provisions as to Bonds Issued In Book-Entry Form. The following provisions shall apply only if the Bonds are issued in book-entry form:

(a) Except as otherwise provided in subsections (b) and (c) of this Section 2.10, all of the Bonds initially executed and delivered hereunder shall be registered in the name of Cede & Co., as nominee for DTC, or such other nominee as DTC shall request pursuant to the Representation Letter. Payment of the principal of and interest on each Bonds registered in the name of Cede & Co. shall be made to the account, in the manner and at the address indicated in or pursuant to the Representation Letter delivered to DTC by the Authority.

(b) The Bonds executed and delivered pursuant to this Section 2.10 shall be in the form of a single authenticated fully registered bond for each maturity of Bond. The ownership of all such Bonds shall be registered in the registration books maintained by the Paying Agent pursuant to Section 2.09 in the name of Cede & Co., as nominee of DTC, or such other nominee as DTC may request. The Paying Agent, the Authority and the County may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal of and interest on such Bonds, selecting any Bonds or portions thereof to be prepaid, giving any notice permitted or required to be given to an Owner under this Indenture, registering the transfer of Bonds, obtaining any consent or other action to be taken by the Owners and for all other purposes whatsoever; and neither the Paying Agent, the Authority nor the County shall be affected by any notice to the contrary. Neither the Paying Agent nor the County shall have any responsibility or obligation to any Participant (which shall

mean, for purposes of this Section 2.10, securities brokers and dealers, banks, trust companies, clearing corporations and other entities, some of whom directly or indirectly own DTC), any person claiming a beneficial ownership interest in the Bonds under or through DTC or any Participant, or any other person which is not shown on the registration records as being an Owner, with respect to (i) the accuracy of any records maintained by DTC or any Participant; (ii) the payment by DTC or any Participant of any amount in respect of the principal or interest represented by such Series A Bonds; (iii) any notice which is permitted or required to be given to the Owners under this Indenture; (iv) the selection by DTC or any Participant of any person to receive payment in the event, if any, of a partial prepayment of the Bonds; or (v) any consent given or other action taken by DTC as Owner. The Paying Agent shall pay all principal of and premium, if any, and interest on the Bonds only at the times, to the accounts, at the addresses and otherwise in accordance with the Representation Letter. Upon delivery by DTC to the Paying Agent of written notice to the effect that DTC has determined to substitute a new nominee in place of its then existing nominee, the Bonds will be transferable to such new nominee in accordance with subsection (f) of this Section 2.10.

(c) In the event that the Authority determines that it is in the best interests of the beneficial owners of the Bonds that they be able to obtain bonds, the Paying Agent shall, upon the written instruction of the Authority, so notify DTC, whereupon DTC shall notify the Participants of the availability through DTC of Bonds. In such event, the Bonds will be transferable in accordance with subsection (f) of this Section 2.10. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice of such discontinuance to the County, the Authority or the Paying Agent and discharging its responsibilities with respect thereto under applicable law. In such event, the Bonds will be transferable in accordance with subsection (f) of this Section 2.10. Whenever DTC requests the County, the Authority or the Paying Agent to do so, the Paying Agent, the Authority and the County will cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of all Bonds evidencing the Bonds then Outstanding. In such event, the Bonds will be transferable to such securities depository in accordance with subsection (f) of this Section 2.10, and thereafter, all reference in this Indenture to DTC or its nominee shall be deemed to refer to such successor securities depository and its nominee, as appropriate.

(d) Notwithstanding any other provision of this Indenture to the contrary, so long as all Bonds Outstanding are registered in the name of any nominee of DTC, all payments with respect to the principal and interest represented by each such Bond and all notices with respect to each such Bond shall be made and given, respectively, to DTC as provided in the Representation Letter.

(e) The Authority shall execute and deliver the Representation Letter and, in connection with any successor nominee for DTC and any successor depository, enter into comparable arrangements, and shall have the same rights with respect to its actions thereunder as it has with respect to its actions under this Indenture.

(f) In the event that any transfer or exchange of Bonds is authorized under subsection (b) or (c) of this Section 2.10, such transfer or exchange shall be accomplished upon receipt by the Paying Agent from the registered owner thereof of the Bonds to be transferred or

exchanged and appropriate instruments of transfer to the permitted transferee, all in accordance with the applicable provisions of Section 2.7. In the event Bonds are issued to holders other than Cede & Co., its successor as nominee for DTC as holder of all the Bonds, another securities depository as holder of all the Bonds, or the nominee of such successor securities depository, the provisions of Section 2.3, Section 2.9 and Article III shall also apply to, among other things, the registration, exchange and transfer of the Bonds and the method of payment of principal of, premium, if any, and interest on the Bonds.

Section 2.11. Validity of the Bonds. The validity of the authorization and issuance of the Bonds shall not be dependent upon the completion of the Improvements or upon the performance by any person of such person's obligation with respect to the Improvements.

Section 2.12. Refunding of Bonds. The Bonds may be refunded by the Authority in accordance with Section 4.8 and may be refunded at any other time by the Authority as permitted by and in accordance with this Indenture and applicable law including, but not limited to, the JPA Act.

Section 2.13. Unclaimed Money. To the extent permitted by law, all money which the Paying Agent shall have received from any source and set aside for the purpose of paying or redeeming any of the Bonds shall be held for the respective Owners of such Bonds, but any money which shall be so set aside or deposited by the Paying Agent and which shall remain unclaimed by the Owners of such Bonds for a period of one year after the date on which any payment or redemption with respect to such Bonds shall have become due and payable shall be transferred to the Authority; provided, however, that the Paying Agent, before making such payment, shall cause notice of unclaimed money to be mailed to the Owners of such Bonds, by first class mail, postage prepaid. Thereafter, the Owners of such Bonds shall look only to the Authority for payment and then only to the extent of the amount so received without any interest thereon.

Section 2.14. Nonpresentation of Bonds. Except as otherwise provided in Section 2.13 hereof, in the event any Bonds shall not be presented for payment when the principal or redemption price thereof becomes due, if funds sufficient to pay such Bonds shall be held by the Paying Agent for the benefit of the Owners thereof, all liability of the Authority to the Owners thereof shall forthwith cease and be completely discharged and thereupon it shall be the duty of the Paying Agent to hold such funds (subject to Section 2.13 hereof), without liability for interest thereon, for the benefit of the Owners of such Bonds, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on or with respect to such Bonds.

Section 2.15. Additional Bonds. (a) The Authority hereby authorizes and approves the issuance of Additional Bonds for the purpose of financing further County disbursements under and in accordance with the LACEP, which Additional Bonds shall be issued and delivered pursuant to Supplemental Indentures and agreements, including additional Loan Agreements and bond purchase agreements, as may be approved by the Authority Board from time to time.

The Authority may issue bonds of equal security with that of the Bonds payable from the Assessment Installments as provided herein on a parity with any Bonds theretofore issued hereunder, but only subject to the following conditions:

(i) The issuance of such Bonds shall have been authorized under and pursuant to the JPA Act and under and pursuant hereto and shall have been provided for by a supplemental indenture which shall specify the following:

(1) The proceeds of the sale of such Bonds shall be applied for the purpose of providing funds to refund any Bonds issued hereunder or for the purpose of funding additional Loans to the County, which Loans shall be repaid from additional Assessments;

(2) The principal amount and designation of such Bonds and the denomination or denominations of the Bonds;

(3) The date, the maturity date or dates, the interest payment dates and the dates on which mandatory sinking fund payments are due, if any, for such Bonds; provided, that (i) the serial Bonds shall be payable as to principal annually on September 2 of each year in which principal falls due, and the term Bonds shall have annual mandatory redemption on September 2, (ii) the Bonds shall be payable as to interest semiannually on March 2 and September 2 of each year, except that the first installment of interest may be payable on either March 2 or September 2 and shall become due on the interest payment date which is six months before the maturity of the first series of Bonds and the interest shall be payable thereafter semiannually on March 2 and September 2, (iii) all Bonds of like maturity shall be identical in all respects, except as to number or denomination, and (iv) serial maturities of serial Bonds or mandatory sinking fund payments for term Bonds, or any combination thereof, shall be established to provide for the redemption or payment of such Bonds on or before their respective maturity dates;

(4) The redemption premiums and terms, if any, for such Bonds;

(5) The form of the Bonds;

(6) The amount to be deposited from the proceeds of sale of such Bonds or other County funds, if any, in the Reserve Fund to increase the amount therein to an amount at least equal to the Reserve Requirement for all Outstanding Bonds of the Authority secured on a parity by the Assessment Installments; and

(7) Such other provisions that are appropriate or necessary and are not inconsistent with the provisions hereof; and

(ii) The Authority shall be in compliance with all agreements, conditions, covenants and terms contained herein and in all Supplemental Indentures required to be observed or performed by it.

(b) Additional Bonds authorized to be issued under this Section 2.15 may only be issued if no Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) has occurred and is continuing (unless such default

is to be remedied upon the issuance of such Additional Bonds) and the Reserve Requirement is to be satisfied upon the issuance of such Additional Bonds.

Section 2.16. Restrictions on Transfer of Bonds. The transfer of the Bonds shall be restricted [as determined by the Authority.]

**ARTICLE III**

**REDEMPTION OF BONDS**

Section 3.1. Mandatory Redemption of Series A Bonds. The Series A Bonds shall be redeemed prior to maturity, in whole or in part on any Interest Payment Date, pro rata among maturities and by lot within a maturity, from Loan prepayments on deposit and available for such purpose in the related Loan Prepayment Account of the Debt Service Fund, to the extent of and in the manner set forth in Section 4.4(c) of this Indenture at the redemption price equal to 10% of the principal amount of the Series A Bonds to be redeemed, together with accrued interest to the date of redemption.

Section 3.2. Optional Redemption of Series A Bonds. The Series A Bonds maturing on or after September 2, 20\_\_ are subject to redemption prior to maturity, in whole or in part on any Interest Payment Date, on and after September 2, 20\_\_, pro rata among maturities and by lot within a maturity, from surplus monies on deposit and available for such purpose in the Debt Service Fund from sources other than those in the Loan Prepayment Account, at the option of the Authority at the redemption price equal to the principal amount thereof, together with a premium (expressed as a percentage of the principal amount of Series A Bonds to be redeemed), plus accrued interest to the date of redemption as set forth in the following table:

<b><u>Redemption Dates</u></b>	<b><u>Redemption Premium</u></b>
Interest Payment Dates Through [March 2, 20__ – at least five years from date of issuance]	__%
September 2, 20__ and March 2, 20__	__
September 2, 20__ and March 2, 20__	__
September 2, 20__ and thereafter	__

In the event that the Authority shall elect to redeem the Series A Bonds as provided in this Section 3.2, the Authority shall give written notice to the Paying Agent of its election to so redeem the Series A Bonds, the redemption date and the principal amount of each Series of Bonds to be redeemed. Such notice shall be given at least [45] days but no more than [75] days prior to the redemption date.

Section 3.3. Mandatory Sinking Fund Redemption of Series A Bonds. The Series A Bonds maturing on September 2, 20\_\_ (the “Series A Term Bonds”) are also subject to mandatory sinking fund redemption in part, by lot, on such September 2 from mandatory sinking fund payments deposited into the Debt Service Fund, at a redemption price equal to the principal amount thereof, plus accrued interest thereon to the date fixed for redemption, without premium:

<u>Year</u>	<u>Principal Amount</u>
	\$

\*

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\* Maturity.

If some but not all of the Series A Term Bonds maturing on September 2, 20\_\_ are redeemed pursuant to Section 3.1 or Section 3.2 hereof, the principal amount of Series A Term Bonds maturing on September 2, 20\_\_ to be subsequently redeemed pursuant to this subsection shall be reduced by the aggregate principal amount of the Series A Term Bonds maturing on September 2, 20\_\_ so redeemed pursuant to Section 3.1 or Section 3.2 hereof, such reduction to be allocated among redemption dates in amounts of \$5,000 or integral multiples thereof, as designated by the Authority in a written certificate of the Authority filed with the Fiscal Agent.

In lieu of having the Fiscal Agent deposit cash with the Paying Agent as a mandatory sinking fund payment, the Authority shall have the option to tender to the Paying Agent for cancellation any amount of Series A Bonds purchased by the Authority or the County, which Series A Bonds may be purchased by the Authority or the County at public or private sale as and when and at such prices as the Authority or the County may in its discretion determine. The principal amount of any Series A Bonds so purchased by the Authority or the County and tendered to the Paying Agent in any twelve-month period ending on July 1 in any calendar year shall be credited towards and shall reduce the next mandatory sinking fund payments required to be made in the order in which they are required to be made pursuant to this Section 3.3.

Section 3.4. Selection of Bonds for Redemption. Whenever provision is made in this Indenture for the redemption of less than all of a Series of Bonds, the Fiscal Agent shall select the Bonds to be redeemed from all Bonds of a Series not previously called for redemption, by lot in any manner which the Fiscal Agent in its sole discretion shall deem appropriate and fair, subject to compliance with Section 8768 of the Streets and Highways Code as specified in a written certificate of the Authority. For purposes of such selection, all Bonds of a Series shall be deemed to be comprised of separate \$5,000 denominations and such separate denominations shall be treated as separate Bonds which may be separately redeemed.

Section 3.5. Partial Redemption of Bonds. Upon surrender of any Bond to be redeemed in part only, the Paying Agent shall authenticate and deliver to the Owner a new Bond or Bonds of authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bond surrendered, with the same interest rate and the same maturity and of the same Series. Such partial redemption shall be valid upon payment of the amount required to be paid to such Owner, and the Authority shall be released and discharged thereupon from all liability to the extent of such payment.

Section 3.6. Notice of Redemption. The Paying Agent on behalf and at the expense of the Authority shall mail (by first class mail) notice of any redemption to the respective Owners of any Bonds designated for redemption at their respective addresses appearing on the Registration Books, at least 30 days (or other shorter period upon the consent of

the Owners of any Bonds designed for redemption) but not more than sixty 60 days prior to the date fixed for redemption. Such notice shall state the date of the notice, the redemption date, the redemption place and the Redemption Price and shall designate the CUSIP numbers (if any) of the Bonds to be redeemed, the Bond numbers and the maturity or maturities (except in the event of redemption of all of the Bonds of such maturity or maturities in whole) of the Bonds to be redeemed, and shall require that such Bonds be then surrendered at the office of the Paying Agent for redemption at the Redemption Price, giving notice also that further interest on such Bonds will not accrue from and after the date fixed for redemption and with regard to optional redemption in the event that funds required to pay the redemption price are not on deposit under the Paying Agent Agreement at the time the notice of redemption is sent, a statement to the effect that the redemption is conditioned upon the receipt of the appropriate funds required to pay the redemption price by the Paying Agent on or prior to the redemption date. Neither the failure to receive any notice so mailed, nor any defect in such notice, shall affect the sufficiency of the proceedings for the redemption of the Bonds or the cessation of accrual of interest thereon from and after the date fixed for redemption. The Authority has the right to rescind any optional redemption from prepayments of unpaid assessments by written notice to the Paying Agent on or prior to the date fixed for redemption. Any notice of redemption shall be canceled and annulled if for any reason funds are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default hereunder. The Paying Agent shall mail notice of rescission of redemption in the same manner notice of redemption was originally provided.

If the Bonds are issued in book-entry form, notice shall also be provided to the Securities Depositories and the Information Services.

Section 3.7. Effect of Notice and Availability of Redemption Price. Notice of redemption having been duly given as aforesaid, and the amount necessary for the redemption having been made available for that purpose and being available therefor on the date fixed for such redemption: (1) the Bonds, or portions thereof, designated for redemption shall, on the date fixed for redemption, become due and payable at the redemption price thereof as provided in this Indenture, anything in this Indenture or in the Bonds to the contrary notwithstanding; (2) upon presentation and surrender thereof at the office of the Paying Agent, such Bonds shall be redeemed at the redemption price; (3) from and after the Redemption Date, the Bonds or portions thereof so designated for redemption shall be deemed to be no longer Outstanding and such Bonds or portions thereof shall cease to accrue interest; and (4) from and after the date fixed for redemption no Owner of any of the Bonds or portions thereof so designated for redemption shall be entitled to any of the benefits of this Indenture or to any other rights, except with respect to payment of the redemption price and interest accrued to the Redemption Date from the amounts so made available.

## **ARTICLE IV**

### **FUNDS AND ACCOUNTS**

Section 4.1. Establishment of Funds and Accounts. The following funds and accounts are hereby created and established and shall be maintained by the Fiscal Agent for the administration and control of the proceeds of the Bonds, the Revenues and any related moneys:

(a) Los Angeles County Energy Program Contractual Assessment Revenue Bonds Loan Fund (the “Loan Fund”), within which there shall be a separate account with appropriate designations for each Series of New Money Bonds;

(b) Los Angeles County Energy Program Contractual Assessment Revenue Bonds Escrow Fund (the “Escrow Fund”), within which there shall be a separate account with appropriate designations for each Series of Refunding Bonds;

(c) Los Angeles County Energy Program Contractual Assessment Revenue Bonds Debt Service Fund (the “Debt Service Fund”), within which there shall be established (A) the Loan Payment Account (the “Loan Payment Account”); and (B) the Loan Prepayment Account (the “Loan Prepayment Account”);

(d) Los Angeles County Energy Program Contractual Assessment Revenue Bonds Reserve Fund (the “Reserve Fund”); and

(e) Los Angeles County Energy Program Contractual Assessment Revenue Bonds Costs of Issuance Fund (the “Costs of Issuance Fund”), within which there shall be a separate account with appropriate designations for each Series of Bonds.

The funds and accounts established herein may be subdivided into accounts and sub-accounts, as applicable, to perform the necessary rebate calculations or to administer the funds as provided in this Indenture.

Section 4.2. Application of Proceeds of the Series A Bonds. On the Closing Date for the Series A Bonds, the proceeds of the sale of the Series A Bonds in the amount of \$\_\_\_\_\_ shall be paid to the Fiscal Agent and transferred or deposited by the Fiscal Agent as follows:

(a) \$\_\_\_\_\_ in the account within the Loan Fund established for the Series A Bonds and transferred to the County;

(b) \$\_\_\_\_\_ in the Reserve Fund, constituting the full amount of the Reserve Requirement; and

(c) \$\_\_\_\_\_ in the account within the Costs of Issuance Fund established for the Series A Bonds.

Section 4.3. Loan Fund. The Fiscal Agent hereby agrees to maintain the Loan Fund and the accounts therein, into which shall be deposited the balance of the proceeds of sale of the Bonds pursuant to Section 2.3, after making the deposits to the Escrow Fund required (if any) by Section 4.8, if any. The Fiscal Agent may establish in the Loan Fund one or more accounts as it may deem necessary or convenient for the purpose of holding the proceeds of separate Series of Bonds subject to separate Loan Agreements. Moneys in the Loan Fund or in any accounts therein shall be disbursed by the Fiscal Agent to the County in accordance with Section 4.2(a) hereof or as otherwise provided in a written request of the County provided to the Fiscal Agent.

Section 4.4. Debt Service Fund and Accounts. (a) The Fiscal Agent hereby agrees to maintain the Debt Service Fund (the “Debt Service Fund”) and the accounts therein until all payments of principal of and premium (if any) and interest on the Bonds have been made and all of the Bonds have been paid or redeemed. The Fiscal Agent shall establish within the Debt Service Fund a Loan Payment Account and a Loan Prepayment Account. All sums received by the Authority from the County pursuant to the Loan Agreements in connection with the collection of Assessment Installments, including any redemption period interest and penalties thereon and the proceeds of the exercise of any of the remedies for delinquent payments available hereunder or under the 1913 Act or the 1915 Act, shall be deposited and held in the Loan Payment Account of the Debt Service Fund relating to the Series of Bonds to which such Revenues are pledged as security.

(b) The Paying Agent shall make payments of interest and principal, respectively, due and payable with respect to Bonds from monies which shall be transferred to it by the Fiscal Agent on or before such date from the Loan Payment Account of the Debt Service Fund on each Interest Payment Date and each Principal Payment Date. In the event of any deficiency in the Loan Payment Account, the Fiscal Agent shall, to the extent available, transfer amounts from the Reserve Fund to the Loan Payment Account or directly to the Paying Agent in accordance with Section 4.7 hereof for application first to the payment of interest on the Bonds, and then to the payment of principal due on such Bonds and then to the payment of principal due on such Bonds or any portion thereof called for redemption pursuant to Section 3.2 hereof.

On each September 2 beginning on the first Principal Payment Date, all monies in the Loan Payment Account in excess of the amount necessary to make the payments of principal of and interest on the Bonds then due or overdue and payable on such date (assuming all Owners entitled to payment on or before such date take or have taken any and all actions necessary on their part to receive amounts due them) shall be transferred by the Fiscal Agent (i) first to the Reserve Fund to the extent of any deficiency therein, for application in accordance with Section 4.7 hereof, and (ii) second, to a special account to be established and maintained by the Fiscal Agent to be designated the Loan Prepayment Account of the Debt Service Fund for application to the redemption of the Bonds pursuant to Section 3.2 hereof.

(c) Amounts received from, or on behalf of, the County as prepayment of any Loan pursuant to Section 4.5(a) shall be deposited by the Fiscal Agent in the Loan Prepayment Account of the Debt Service Fund for application pursuant to Section 4.5(b) hereof. The Fiscal Agent shall deposit in the Loan Prepayment Account amounts transferred to such account from the Reserve Fund pursuant to Section 4.7 below. Amounts in the Loan Prepayment Account shall be used to pay the principal of and redemption premium on Bonds the maturities of which shall have been advanced pursuant to Parts 11 or 11.1 of the 1915 Act, codified as Sections 8750 et seq. and 8760 et seq. of the California Streets and Highways Code. The Paying Agent, at the direction of the Treasurer if the Paying Agent is not the Treasurer, shall advance the maturity of and call Bonds for redemption pursuant to this Indenture and the 1915 Act whenever and to the extent surplus monies are on deposit in the Loan Prepayment Account sufficient to pay the principal of Bonds in integral \$5,000 amounts plus the redemption premium thereon. On or after each Redemption Date, or prior thereto with the consent of the Treasurer, upon presentation and surrender thereof, the Paying Agent shall pay the principal of and redemption premium on each Bond the maturity of which has been so advanced from the Loan Prepayment Account. Interest

accrued on each such Bond to the earlier of the payment date or Redemption Date shall be paid from monies transferred to the Paying Agent on or before such date by the Fiscal Agent from the Loan Payment Account of the Debt Service Fund.

(d) If there is a surplus remaining in any account in the Debt Service Fund after payment of all Bonds and the interest thereon, plus applicable redemption premium (if any), that surplus shall be released from the pledge and lien hereof and transferred to the County to be used for the benefit of the LACEP.

Section 4.5. Prepayment of Loans from Assessment Prepayments. (a) The County shall prepay any Loan to the extent any owner of assessed land may prepay the Assessment of an Assessment Contract.

(b) Upon prepayment of a Loan pursuant to subsection (a) above, the Fiscal Agent shall deposit such payment in the Debt Service Fund for payment to Owners of the corresponding Bonds to be redeemed in accordance with Section 3.1. If notice of redemption is given in accordance with Section 3.6 hereof, the Bonds so advanced shall mature and become payable as set forth in Section 3.7 hereof.

Section 4.6. Costs of Issuance Fund. The Fiscal Agent hereby agrees to maintain the Costs of Issuance Fund and the accounts therein. The moneys in the Costs of Issuance Fund shall be used and withdrawn by the Fiscal Agent from time to time to pay the Costs of Issuance upon submission of a Disbursement Request of the Authority, substantially in the form of Exhibit B hereto, stating (a) the Person to whom payment is to be made, (b) the amount to be paid, (c) the purpose for which the obligation was incurred, (d) that such payment is a proper charge against the applicable account of the Costs of Issuance Fund, and (e) that such amounts have not been the subject of a prior disbursement from the applicable account of the Costs of Issuance Fund; in each case together with a statement or invoice for each amount requested thereunder. On or before 180 days following the issuance of a Series of Bonds, the Fiscal Agent shall transfer all amounts (if any) remaining in the Costs of Issuance Fund to the Debt Service Fund.

Section 4.7. Reserve Fund. (a) The Fiscal Agent hereby agrees to maintain and hold in trust a special fund designated the "Reserve Fund" until all payments of principal of and premium (if any) and interest on the Bonds have been made and all Bonds have been paid or redeemed. At the time of issuance of a Series of the Bonds, there shall be deposited in the Reserve Fund an amount that will, together with amounts on deposit in the Reserve Fund, equal the Reserve Requirement. There shall be maintained in the Reserve Fund an amount equal to the Reserve Requirement. Additional deposits shall be made as provided in the 1915 Act and this Indenture.

The Authority shall cause the Reserve Fund to be administered in accordance with Part 16 of the 1915 Act; provided that proceeds from redemption or sale of properties, with respect to which payment of delinquent Assessments and interest thereon was made from the Reserve Fund, shall be credited to the Reserve Fund.

(b) Moneys in the Reserve Fund shall be used solely for the purpose of paying the principal of and interest on the Bonds (i) in the event of early prepayment of assessments in an amount which shall equal the ratio of the total amount initially provided for the Reserve Fund to the total amount originally assessed in the proceedings for the Bonds said ratio multiplied by the amount of the prepayment, (ii) or in the event that the moneys in the Debt Service Fund are insufficient therefor, and the Fiscal Agent shall withdraw from the Reserve Fund and deposit in the Debt Service Fund moneys necessary for such purpose.

(c) On each September 2, the Fiscal Agent shall transfer to the Reserve Fund any excess amounts in the Loan Payment Account of the Debt Service Fund pursuant to the second paragraph of section 4.4(b). On each September 2 the Fiscal Agent shall, after making any transfer called for by the preceding sentence, determine whether amounts then on deposit in the Reserve Fund are less than, equal to or exceed the Reserve Requirement. Any such excess shall, to the extent permitted by law, be applied by the Fiscal Agent as follows:

(i) First, to the Loan Payment Account of the Debt Service Fund to be applied to the payment of principal or interest due on the Bonds; and

(ii) Second, to the Loan Prepayment Account of the Debt Service Fund for application to the redemption of Bonds pursuant to Section 3.2 hereof.

(d) Whenever, after the issuance of the Bonds, an Assessment is prepaid, in whole or in part, as provided in the 1915 Act, the Fiscal Agent, pursuant to a Written Request of the Authority, shall transfer from the Reserve Fund to the Debt Service Fund an amount, specified in such Written Request, equal to the product of the ratio of the original amount of the Assessment so paid to the original amount of all unpaid Assessments, times the initial Reserve Requirement; provided, however, no such transfer shall be made if after the transfer the amounts in the Reserve Fund then remaining will not equal the Reserve Requirement. The Fiscal Agent may conclusively rely upon the Authority's determination that the remaining funds equal the Reserve Requirement.

(e) So long as no Event of Default shall have occurred and be continuing any amount in the Reserve Fund in excess of the Reserve Requirement on December 15 and June 15 of each year shall be withdrawn from the Reserve Fund by the Fiscal Agent and shall be deposited in the Debt Service Fund.

(f) Whenever the balance in the Reserve Fund is sufficient to retire all the Outstanding Bonds, whether by advance retirement or otherwise, collection of the principal and interest on the Assessments shall be discontinued and the Reserve Fund liquidated by the Fiscal Agent in retirement of the Outstanding Bonds, as directed by a Written Request of the Authority. In the event that the balance in the Reserve Fund at the time of liquidation exceeds the amount required to retire all of the Outstanding Bonds, the excess shall, after payment of amounts due to the Fiscal Agent, be transferred to the Authority to be used in accordance with the JPA Act and the 1915 Act.

(g) All amounts remaining in the Reserve Fund in the year in which the last Assessments become due and payable shall be credited toward said Assessments and transferred to the Debt Service Fund pursuant to a Written Request of the Authority.

(h) All or a portion of the Reserve Requirement may be satisfied by the provision of one or more policies of municipal bond insurance or surety bonds issued by a municipal bond insurer or by a letter of credit issued by a bank, the obligations insured by which insurer or issued by which bank, as the case may be, having ratings at the time of issuance of such policy or surety bond or letter of credit equal to “AA” or higher assigned by Fitch or “Aa” or higher assigned by Moody’s or “AA” or higher assigned by Standard & Poor’s.

Section 4.8. Escrow Fund; Refunding Bonds. (a) The Fiscal Agent hereby agrees to maintain the Escrow Fund and the accounts therein, into which shall be deposited net proceeds of Refunding Bonds to be used to redeem Outstanding Prior Bonds.

(b) In accordance with Section 9.1 of this Indenture, upon the issuance of any Series of Refunding Bonds, the Authority shall cause to be deposited with the Fiscal Agent in the applicable account of the Escrow Fund the following: (i) the then Outstanding principal amount of the Prior Bonds being refunded and defeased by such Series of Refunding Bonds, and (ii) interest accrued and unpaid on such Prior Bonds to the Redemption Date.

(c) Upon receipt of the moneys described in subsection (b) above, the Fiscal Agent shall pay such moneys to the Owners of the Prior Bonds for the equal and ratable benefit of such Owners. A Redemption Notice shall be provided by the Fiscal Agent to the Owners of the Prior Bonds in accordance with Section 3.6.

(d) The Authority and the Fiscal Agent represent and agree that, concurrently with the initial deposit of the moneys in the applicable account of the Escrow Fund pursuant to this Section 4.8, (i) the Prior Bonds will no longer be deemed to be Outstanding and unpaid within the meaning and with the effect expressed in Section 9.1 of this Indenture, and (ii) the Prior Loan will no longer be deemed to be outstanding and unpaid within the meaning and with the effect expressed in the Prior Loan Agreement.

(e) Monies remaining on deposit in any account of the Escrow Fund after payment of all amounts to the Owners of the applicable Series of Prior Bonds shall be released to the County for the benefit of the LACEP within five (5) Business Days after such payment to the Owners of the applicable Series of Prior Bonds,

Section 4.9. Investments. (a) Except for any escrow fund established hereunder (and the accounts therein), all moneys in any of the funds or accounts established pursuant to this Indenture shall be invested by the Fiscal Agent solely in Authorized Investments. All moneys in any escrow fund established hereunder (and the accounts therein) shall be invested by the Fiscal Agent solely in Federal Securities. Obligations purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account. Moneys in the Debt Service Fund and the accounts therein shall be invested only in obligations which will by their terms mature on such dates as to ensure the timely payment of principal and interest on the corresponding Bonds as the same become due.

(b) All interest or gain derived from the investment of amounts in any of the funds or accounts hereunder shall be deposited in the fund or account from which such investment was made. The Fiscal Agent shall incur no liability for losses arising from any investments made pursuant to this Section.

(c) For the purpose of determining the amount in any fund or account hereunder, the value of investments credited to such fund or account shall be calculated at the cost thereof, excluding accrued interest and brokerage commissions, if any.

(d) The Fiscal Agent shall sell at the best price obtainable or present for redemption any obligations so purchased whenever it may be necessary to do so in order to provide moneys to meet any payment or transfer for such funds and accounts or from such funds and accounts. For the purpose of determining at any given time the balance in any fund or account, any such investments constituting a part of such fund and account shall be valued at their amortized cost.

## **ARTICLE V**

### **COVENANTS**

So long as any of the Bonds issued hereunder are outstanding, the Authority and the County makes the following covenants with the Owners (to be performed by the Authority or its proper officers, agents or employees), which covenants are necessary, convenient and desirable to secure the Bonds; provided, however, that said covenants do not require the Authority or the County to expend any funds other than the Revenues.

Section 5.1. Compliance with Indenture. The Authority will faithfully observe and perform all of the conditions, covenants and requirements of this Indenture required to be observed or performed by it.

Section 5.2. General. The Authority shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the Authority under the provisions of this Indenture. The Authority warrants that upon the date of execution and delivery of the Bonds, all conditions, acts and things required by law and this Indenture to exist, to have happened and to have been performed precedent to and in the execution and delivery of such Bonds do exist, have happened and have been performed and the execution and delivery of the Bonds shall comply in all respects with the applicable laws of the State.

Section 5.3. Punctual Payment. The Authority shall punctually pay or cause to be paid the principal, premium (if any) and interest to become due in respect of all the Bonds, in strict conformity with the terms of the Bonds and of this Indenture, according to the true intent and meaning thereof, but only out of Revenues and other moneys pledged for such payment as provided in this Indenture and received by the Authority or the Fiscal Agent hereunder.

Section 5.4. Extension of Payment of Bonds. The Authority shall not directly or indirectly extend the maturity dates of the Bonds or the time of payment of interest with respect thereto. Nothing herein shall be deemed to limit the right of the Authority to issue any

securities for the purpose of providing funds for the redemption of the Bonds and such issuance shall not be deemed to constitute an extension of the maturity of the Bonds.

Section 5.5. Protection of Rights. The Authority will preserve and protect the security of the Bonds and the rights of the Owners against all claims and demands of all persons, and will faithfully perform and abide by all of the covenants, undertakings and provisions contained in this Indenture or in any Bond issued pursuant to this Indenture and will contest by court action or otherwise (a) the assertion by any officer of any government unit or any other person whatsoever against the Authority that (i) the JPA Act or the Contractual Assessment Law is unconstitutional, (ii) the Assessments are invalid, or (iii) the Assessments cannot be applied by the County to pay debt service on the Bonds, or (b) any other action affecting the validity of the Bonds or diluting the security therefor.

Section 5.6. Against Encumbrances. The Authority will not encumber, pledge or place any charge or lien upon any of the Revenues or other amounts pledged to the Bonds superior to or on a parity with the pledge and lien herein created for the benefit of the Bonds, except as permitted by this Indenture.

Section 5.7. Deferral of Assessments. The County will refrain from directly or indirectly extending or deferring the payment of any Assessment Installment.

Section 5.8. Accounting Records and Statements. The Authority will keep or cause to be kept proper accounting records in which complete and correct entries shall be made of all transactions relating to the receipt, deposit and disbursement of the Assessment Installments, and such accounting records shall be available for inspection upon five (5) business days' written notice by any Owner or such Owner's agent duly authorized in writing at reasonable hours and under reasonable conditions.

Section 5.9. Covenant to Foreclose. (a) The County will initiate procedures to determine or cause to be determined if any Assessment was not paid when due during the fiscal year ended the prior June 30. If any such assessment was not paid and if the balance in the Reserve Fund is less than the Reserve Requirement, the County shall, upon the written request of the Owners pursuant to Section 8.2(b) hereof, send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to the property owner, and if the delinquency remains uncured within 90 days of such notice, order and cause to be commenced, and thereafter prosecute to completion pursuant to Section 8830 et seq. of the California Streets and Highways Code, judicial foreclosure proceedings upon the lien of delinquent unpaid assessments as necessary or desirable to result in assessment revenues sufficient to pay any delinquent principal of or interest on the Bonds and satisfy the Reserve Requirement. Upon the redemption or sale of the real property responsible for such delinquent Assessment Installments, or resale as provided below, the County shall deposit to the Reserve Fund, the amount of any delinquency advanced therefrom to the Debt Service Fund for payment of interest on or principal of Bonds.

(b) In the event that real property with an Assessment is neither redeemed by the owner thereof nor sold to a third party purchaser at such foreclosure sale, the County may, but shall not be obligated to, cause a credit bid on behalf of and in the name of the County to be entered in the amount due the County and shall cause a sheriff's deed for said real property to be

executed in the name of the County. The proceeds from any resale of such real property on which there is an Assessment shall be applied in the following order: (i) to make any past due payments of principal of or interest on the Bonds, (ii) to restore the Reserve Fund to the Reserve Requirement, (iii) to the payment of any continuing costs of the Bonds, and (iv) for the redemption of Bonds pursuant to Section 3.2 hereof with credit for such redemption credited pro rata against all Assessments.

(c) In the event that the Treasurer and the County make the determinations described in the Sections 8770-8772 of the 1915 Act in connection with the prospects of an ultimate loss accruing to the bondholders, the County, the Treasurer and the Fiscal Agent shall take the actions required by Sections 8770-8784 of said Act and Owners of Bonds shall be deemed to have consented to do such things as are required by such Sections of Owners of Bonds.

Section 5.10. Further Assurances. The Authority will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of its duties under this Indenture, and for the better assuring and confirming unto the Owners of the Bonds the rights and benefits provided in this Indenture.

## **ARTICLE VI**

### **PAYING AGENT AND FISCAL AGENT**

Section 6.1. Paying Agent and Fiscal Agent. The Authority hereby appoints the Treasurer of the County, or his designated agents, as the Paying Agent and the Auditor, or his designated agents, as the Fiscal Agent for the Bonds.

The Paying Agent is hereby authorized to and shall mail interest payments to the Owners, select Bonds for redemption, give notice of redemption and maintain the Bond Register. The Paying Agent is hereby authorized to and shall pay, from funds on deposit for such purposes hereunder, the principal of and premium, if any, on the Bonds when the same are duly presented to it for payment at maturity or on call and redemption, provide for the registration of transfer and exchange of Bonds presented to it for such purposes, provide for the cancellation of Bonds all as provided in this Indenture, and provide for the authentication of Bonds, and shall perform all other duties assigned to or imposed on it as provided in this Indenture. The Paying Agent shall keep accurate records of all Bonds paid and discharged by it.

The Fiscal Agent is also authorized to and shall maintain and administer funds and accounts established pursuant to Section 4.1 hereof. The Fiscal Agent shall keep accurate records of all funds administered by it. The Authority further authorizes and designates the Auditor to perform those functions of the Fiscal Agent set forth herein which, pursuant to the Contractual Assessment Law and the provisions incorporated therein by reference, are to be performed by the treasurer.

Each of the initially appointed Paying Agent and Fiscal Agent may contract with any third party to perform any or all of their obligations and duties under this Indenture. The

Paying Agent and Fiscal Agent may each be removed by the Authority and a successor or successors may be appointed. So long as any Bonds are Outstanding and unpaid, the Paying Agent, the Fiscal Agent and any successor or successors thereto designated by the Authority shall continue to be Paying Agent and Fiscal Agent, respectively, of the Authority for all of said purposes until the designation of a successor or successors.

Section 6.2. Liability of Paying Agent and Fiscal Agent. The recitals of fact and all promises, covenants and agreements contained herein and in the Bonds shall be taken as statements, promises, covenants and agreements of the Authority, and the Paying Agent and the Fiscal Agent assume no responsibility for the correctness of the same and makes no representations as to the validity or sufficiency of this Indenture or of the Bonds, and shall incur no responsibility in respect thereof, other than in connection with its duties or obligations set forth herein or in the Bonds or in the certificate of authentication and registration assigned to or imposed upon the Paying Agent or the Fiscal Agent, as applicable. The Paying Agent shall be under no responsibility or duty with respect to the issuance of the Bonds for value. Neither the Paying Agent nor the Fiscal Agent shall be liable in connection with the performance of their respective duties hereunder, except for their respective negligence or default.

Section 6.3. Compensation. The Authority shall direct the County to pay, from the Program Expense Fund, to the Fiscal Agent from time to time reasonable compensation for all services rendered under this Indenture, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents, and employees, incurred in and about the performance of their powers and duties under this Indenture. Other than funds on deposit in the Program Expense Fund, in no event shall the Authority or the County be required to expend its own funds hereunder or under the Loan Agreements.

## **ARTICLE VII**

### **SUPPLEMENTAL INDENTURES**

Section 7.1. Supplemental Indenture Without Owner Consent. The Authority may from time to time, and at any time, without notice to or consent of any of the Owners enter into such indentures or agreements supplemental hereto as shall not be inconsistent with the terms and provisions hereof (which supplemental indentures or agreements shall thereafter form a part hereof) for any of the following purposes:

(a) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provision with respect to matters or questions arising under this Indenture or in any supplemental indenture, provided that such action shall not adversely affect the interests of the Owners;

(b) to add to the covenants and agreements of and the limitations and the restrictions upon the Authority contained in this Indenture other covenants, agreements, limitations and restrictions to be observed by the Authority which are not contrary to or inconsistent with this Indenture as theretofore in effect;

(c) to modify, alter, amend or supplement this Indenture in any other respect which is not materially adverse to the interests of the Owners; and

(d) to provide for the issuance of any Additional Bonds and to provide the terms of such Additional Bonds, subject to the conditions and upon compliance with the procedure set forth in Section 2.15 hereof.

Section 7.2. Supplemental Indentures with Owner Consent. Except as provided in Section 7.1, the Owners of not less than sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding shall have the right to consent to and approve the execution of such supplemental indentures as shall be deemed necessary or desirable for the purpose of waiving, modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture or agreement; provided, however, that nothing herein shall permit, or be construed as permitting, (a) an extension of the scheduled date of the principal payment of any Bond, or the payment date of interest on, any Bond without the consent of the Owner of such Bond, (b) a reduction in the principal amount of, or redemption price of, any Bond or the rate of interest thereon without the consent of the Owner of such Bond, (c) a reduction in the percentage of Bonds the Owners of which are required to consent to such supplemental indenture, without the consent of the Owners of all Bonds then Outstanding. Except as provided in Section 2.15 hereof, in no event may a modification or amendment provide for the issuance of additional bonds, notes or other evidences of indebtedness payable out of the Revenues.

Section 7.3. Notice of Supplemental Indenture to Owners. If at any time the parties hereto shall desire to enter into an indenture supplemental hereto, which pursuant to the terms of Section 7.2 shall require the consent of the Owners, the Authority shall cause notice of the proposed supplemental indenture to be mailed, postage prepaid, to all Owners at their addresses as they appear in the Registration Books. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that a copy thereof is on file at the office of the Authority for inspection by all Owners. The failure of any Owner to receive such notice shall not affect the validity of such supplemental indenture when consented to and approved as in Section 7.2 provided. Whenever at any time within one year after the date of the first mailing of such notice, the Authority shall receive an instrument or instruments purporting to be executed by the Owners of not less than sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding, which instrument or instruments shall refer to the proposed supplemental indenture described in such notice, and shall specifically consent to and approve it substantially in the form of the copy thereof referred to in such notice as on file with the Authority, such proposed supplemental indenture, when duly executed by the Authority, shall thereafter become a part of the proceedings for the issuance of the Bonds. In determining whether the Owners of the requisite aggregate principal amount of the Bonds have consented to the adoption of any supplemental indenture, Bonds which are owned by the County, the Authority, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the County or the Authority, shall be disregarded and shall be treated as though they were not Outstanding for the purpose of any such determination.

Upon the execution and delivery of any indenture supplemental hereto and the receipt of consent to any such supplemental indenture from the Owners of the appropriate

aggregate principal amount of Bonds in instances where such consent is required, this Indenture shall be, and shall be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Authority and all Owners of Bonds then Outstanding shall thereafter be determined, exercised and enforced hereunder, subject in all respects to such modifications and amendments.

## **ARTICLE VIII**

### **DEFAULT**

Section 8.1. Events of Default. Any one or more of the following events shall constitute an “Event of Default”:

(a) Default in the due and punctual payment of the principal of or redemption premium, if any, on any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by declaration or otherwise;

(b) Default in the due and punctual payment of the interest on any Bond when and as the same shall become due and payable; or

(c) Default by the Authority in the observance of any of the agreements, conditions or covenants on its part in this Indenture or in the Bonds contained (other than a payment default referred to in subparagraphs (a) and (b) above), and the continuation of such default for a period of 60 days after the Authority shall have been given notice in writing of such default by any Owner; provided that if within 60 days the Authority has commenced curing of the default and diligently pursues elimination thereof, such period shall be extended to permit such default to be eliminated.

Section 8.2. Remedies on Default. (a) If any installment of principal or interest on any Bond is not paid when due, the owner of such Bond shall have the right to exercise such rights and remedies as are provided to such owner under the Contractual Assessment Law or under other applicable law.

(b) In the event the Authority fails to take any action to eliminate an Event of Default under Section 8.1 hereof, the Owners of not less than sixty percent (60%) in aggregate principal amount of a Series of Outstanding Bonds may institute any suit, action, mandamus or other proceeding in equity or at law for the protection or enforcement of any right under this Indenture, but only if such Owners have first made written request of the Authority, after the right to exercise such powers or right of action shall have occurred, and shall have afforded the Authority a reasonable opportunity either to proceed to exercise the powers granted herein or granted under law or to institute such action, suit or proceeding in its name and unless also, the Authority shall have been offered reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Authority shall have refused or neglected to comply with such request within a reasonable time. Any moneys recovered in such suit, action, mandamus or other proceedings shall be applied first to the payment of the reasonable costs and expenses of the Owners in bringing such suit, action, mandamus or other proceeding, including reasonable compensation to their agents and attorney.

(c) The principal of the Bonds shall not be subject to acceleration.

Section 8.3. Remedies Not Exclusive; Non-Waiver. No remedy conferred hereby upon any Owner is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by the JPA Act, the Contractual Assessment Law, or any other law of the State. No waiver of any default or breach of duty or contract by any Owner shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies on said subsequent default or breach. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed as a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Owners may be enforced and exercised as often as may be deemed expedient. In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and the Owner shall prevail, said Owner shall be entitled to receive reimbursement for reasonable costs, expenses, outlays and attorney's fees and should said suit, action or proceeding be abandoned, or be determined adversely to the Owners then, and in every such case, the Authority and the Owners shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

Section 8.4. Limited Liability of the Authority to the Owners; No Liability of the Authority. Except for the collection of the Revenues and the observance and performance of the other conditions, covenants and terms contained herein or in the JPA Act required to be observed or performed by it, the Authority shall not have any obligation or liability to the Owners with respect to this Indenture or the preparation, authentication, delivery, transfer, exchange or cancellation of the Bonds. The County has determined that no funds of the County will be available to pay principal of, premium, if any, or interest on the Bonds. The County has determined that pursuant to the Contractual Assessment Law, the County will not obligate itself to advance available funds from the County's treasury to cure any deficiency which may occur in the Debt Service Fund.

## **ARTICLE IX**

### **MISCELLANEOUS**

Section 9.1. Defeasance. If all Outstanding Bonds of a Series shall be paid and discharged in any one or more of the following ways:

(a) by paying or causing to be paid the principal of and interest with respect to all Bonds of such Series then Outstanding, as and when the same become due and payable;

(b) by depositing with the Fiscal Agent, at or before maturity, an amount which, together with the amounts then on deposit in the corresponding account of the Debt Service Fund, is fully sufficient to pay the principal of and redemption premium (if any) and interest on all Bonds of such Series then Outstanding as and when the same shall become due and payable or, in the event of redemption thereof, before their respective Maturity Dates; or

(c) by depositing with the Fiscal Agent Federal Securities in such amount as the Authority shall determine, as verified by a nationally recognized Independent Public Accountant, will, together with the interest to accrue thereon and moneys then on deposit in the corresponding account of the Debt Service Fund together with the interest to accrue thereon, be fully sufficient to pay and discharge the principal of, and premium (if any) and interest on all Bonds of such Series then Outstanding as and when the same shall become due and payable;

then, at the election of the Authority, and notwithstanding that any Bonds of such Series shall not have been surrendered for payment, all obligations of the Authority under this Indenture with respect to all Outstanding Bonds of such Series shall cease and terminate, except for (i) the obligation of the Authority Treasurer to pay or cause to be paid to the Owners of the Bonds of such Series not so surrendered and paid, all sums due thereon, and (ii) the Authority's obligations under Section 5.3. Any funds held by the Fiscal Agent in such account of the Debt Service Fund, at the time of receipt of such notice from the Authority, which are not required for the purpose above mentioned, shall be transferred to the County to be used for the benefit of the LACEP.

Section 9.2. Cancellation of Bonds. All Bonds surrendered to the Fiscal Agent for payment upon maturity or redemption shall upon payment therefor be canceled immediately and forthwith transmitted to or upon the order of the Authority. All of the canceled Bonds shall be transferred to and shall remain in the custody of the Fiscal Agent until destroyed by the Fiscal Agent pursuant to due authorization.

Section 9.3. Execution of Documents and Proof of Ownership. Any request, direction, consent, revocation of consent, or other instrument in writing required or permitted by this Indenture to be signed or executed by Owners may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Owners in person or by their attorneys appointed by an instrument in writing for that purpose, or by any bank, trust company or other depository for such Bonds. Proof of the execution of any such instrument, or of any instrument appointing any such attorney, and of the ownership of Bonds shall be sufficient for the purposes of this Indenture (except as otherwise herein provided), if made in the following manner:

(a) The fact and date of the execution by any Owner or his or her attorney of any such instrument and of any instrument appointing any such attorney, may be proved by a signature guarantee of any bank or trust company located within the United States of America. Where any such instrument is executed by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such signature guarantee shall also constitute sufficient proof of his or her authority.

(b) As to any Bond, the person in whose name the same shall be registered in the Bond Register shall be deemed and regarded as the absolute Owner thereof for all purposes, and payment of or on account of the principal of any such Bond, and the interest thereon, shall be made only to or upon the order of the registered Owner thereof or his or her legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond and the interest thereon to the extent of the sum or sums so paid. The Fiscal Agent shall not be affected by any notice to the contrary.

Nothing in this Indenture shall be construed as limiting the Fiscal Agent to such proof, it being intended that the Fiscal Agent may accept any other evidence of the matters herein stated which the Fiscal Agent may deem sufficient. Any request or consent of the Owner of any Bond shall bind every future Owner of the same Bond in respect of anything done or suffered to be done by the Fiscal Agent in pursuance of such request or consent.

Section 9.4. Provisions Constitute Contract. In consideration of the purchase and acceptance of any and all of the Bonds authorized to be issued hereunder by those who shall hold the same from time to time, this Indenture shall be deemed to be and shall constitute a contract between the Authority and the Owners from time to time of the Bonds; and the pledge made in this Indenture and the covenants and agreements herein set forth to be performed on behalf of the Authority shall be for the equal benefit, protection and security of the owners of any and all of the Bonds, all of which, regardless of the time or times of their issuance, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof except as expressly provided in or permitted by this Indenture.

Section 9.5. Payment on Business Day. In any case where the date of the maturity of interest or of principal (and premium, if any) of the Bonds or the date fixed for redemption of any Bonds or the date any action is to be taken pursuant to this Indenture is other than a Business Day, the payment of interest or principal (and premium, if any) or the action need not be made on such date but may be made on the next succeeding day which is a Business Day with the same force and effect as if made on the date required and no interest shall accrue for the period after such date.

Section 9.6. Disqualified Bonds. In the event of a later transfer of the Bonds in accordance with Section 2.7 hereof, in determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of the Authority or the County shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, provided, however, that for the purpose of determining whether the Fiscal Agent shall be protected in relying on any such demand, request, direction, consent or waiver, only Bonds which the Fiscal Agent knows to be so owned or held shall be disregarded.

Section 9.7. Severability. If any covenant, agreement or provision, or any portion thereof, contained in this Indenture, or the application thereof to any person or circumstance, is held to be unconstitutional, invalid or unenforceable, the remainder of this Indenture and the application of any such covenant, agreement or provision, or portion thereof, to other persons or circumstances, shall be deemed severable and shall not be affected thereby, and this Indenture and the Bonds issued pursuant hereto shall remain valid and the Owners shall retain all valid rights and benefits accorded to them under this Indenture and the Constitution and laws of the State.

Section 9.8. Notice. Any notice, demand, direction, request or other instrument authorized or required by this Indenture to be given to or filed with the County, the Authority, the Paying Agent or the Fiscal Agent shall be deemed to have been sufficiently given or filed for all purposes of this Indenture if and when delivered to or sent by certified mail, return receipt requested to:

Authority: Los Angeles County Public Works Financing Authority  
County of Los Angeles  
500 West Temple Street, Room 437  
Los Angeles, California  
Attention: Executive Officer

County: County of Los Angeles  
500 West Temple Street, Room 437  
Los Angeles, California  
Attention: Treasurer and Tax Collector

Paying Agent: County of Los Angeles  
500 West Temple Street, Room 437  
Los Angeles, California  
Attention: Treasurer and Tax Collector

Fiscal Agent: County of Los Angeles  
500 West Temple Street, Room 603  
Los Angeles, California  
Attention: Auditor-Controller

All documents received by the Fiscal Agent of the Paying Agent under the provisions of this Indenture shall be retained in its possession, subject at all reasonable times to the inspection of the Authority, any Owner, and the agents and representatives thereof.

Section 9.9. No Personal Liability. The Authority, the County and the officer, agent or employee thereof shall not be individually or personally liable for the payment of the principal of or interest on the Bonds; but nothing herein contained shall relieve any such entity, officer, agent or employee from the performance of any official duty provided by law.

Section 9.10. Employment of Agents by the Authority. In order to perform its duties and obligations hereunder, the Authority may employ such persons or entities as it deems necessary or advisable. The Authority shall not be liable for any of the acts or omissions of such persons or entities employed by it in good faith hereunder, and shall be entitled to rely, and shall be fully protected in doing so, upon the opinions, calculations, determinations and directions of such persons or entities.

Section 9.11. Counterparts. This Indenture may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original; and such counterparts shall constitute but one and the same instrument.

Section 9.12. Headings. Any headings preceding the texts of the several Articles hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Indenture, nor shall they affect its meaning, construction or effect.

Section 9.13. Governing Law. All provisions of this Indenture are to be governed by the laws of the State.

IN WITNESS WHEREOF, the parties have executed this Indenture effective the date first above written.

[SEAL]

LOS ANGELES COUNTY PUBLIC WORKS  
FINANCING AUTHORITY

By: \_\_\_\_\_  
Chair of the Board of Directors

ATTEST:

Secretary

By: \_\_\_\_\_  
Deputy

COUNTY OF LOS ANGELES

By: \_\_\_\_\_  
Chair of the Board of Supervisors

ATTEST:

SACHI A. HAMAI  
Executive Officer  
of the Board of Supervisors

By: \_\_\_\_\_  
Deputy

TREASURER AND TAX COLLECTOR OF THE  
COUNTY OF LOS ANGELES

By: \_\_\_\_\_  
Mark J. Saladino

APPROVED AS TO FORM:

ANDREA SHERIDAN ORDIN  
COUNTY COUNSEL

AUDITOR-CONTROLLER OF THE COUNTY  
OF LOS ANGELES

By: \_\_\_\_\_  
Principal Deputy County Counsel

By: \_\_\_\_\_  
Wendy L. Watanabe

**EXHIBIT A**  
**FORM OF BOND**

*[Transfer of this Bond is subject to the restrictions set forth in the herein referenced Indenture.]*

*[If this Bond is issued in book-entry form only: then unless this Bond is presented by an authorized representative of DTC (as defined in the indenture) to the trustee for registration of transfer, exchange or payment, and any Bond executed and delivered is registered in the name of Cede & Co. Or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. Or to such other entity as is requested by an authorized representative of DTC), any transfer, pledge or other use hereof for value or otherwise by or to any person is wrongful inasmuch as the registered owner hereof, Cede & Co. Has an interest herein.]*

United States of America  
State of California  
County of Los Angeles

NUMBER [1] \$ \_\_\_\_\_

LOS ANGELES COUNTY PUBLIC WORKS FINANCING AUTHORITY  
LOS ANGELES COUNTY ENERGY PROGRAM  
CONTRACTUAL ASSESSMENT REVENUE [REFUNDING] BOND  
SERIES \_\_\_\_ (TAXABLE)

MATURITY DATE      DATED DATE      INTEREST RATE      [CUSIP NUMBER]

REGISTERED OWNER:

PRINCIPAL AMOUNT:

Under and by virtue of Articles 1 through 4 (commencing with Section 6500) of the Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, as amended (the "JPA Act"), the Los Angeles County Public Works Financing Authority, a joint powers authority organized and existing under the laws of the State of California (the "Authority") hereby promises to pay (but only out of the Revenues as such term is defined in the Indenture, dated as of \_\_\_\_\_, 20\_\_ (the "Indenture") by and among the Authority, the County of Los Angeles, a political subdivision of the State of California (the "County"), the Treasurer and Tax Collector of the County, as paying agent (the "Paying Agent") to the registered owner hereof or registered assigns (the "Owner"), and the Auditor-Controller of the County, as fiscal agent (the "Fiscal Agent") to the Owner, on the Maturity Date identified above, subject to any

right of prior redemption hereinafter mentioned, the principal sum specified above in lawful money of the United States of America, and to pay interest thereon at a rate of interest [determined pursuant to Resolution No. \_\_\_ of the Board of Directors of the Authority (the “Resolution of Issuance”), adopted on [May 25, 2010], in like money from the Interest Payment Date (as hereinafter defined) next preceding the date of authentication and registration of this Bond, unless this Bond is authenticated and registered (i) on an Interest Payment Date, in which event interest shall be payable from such date of authentication and registration, (ii) prior to an Interest Payment Date and after the close of business on the 15th day of the month immediately preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (iii) prior to the close of business on February 15, \_\_\_\_\_, in which event it shall bear interest from the Bond Date stated above, until payment of such principal sum shall have been discharged; provided, however, that if at the time of authentication of such Bond, interest is in default, interest on that Bond shall be payable from the last Interest Payment Date to which the interest has been paid or made available for payment.

The principal of this Bond shall be payable on the Maturity Date. Interest on this Bond shall be payable semiannually on March 2 and September 2 (each an “Interest Payment Date”) in each year commencing on \_\_\_\_\_. Principal of and interest on this Bond shall be paid by check of the Paying Agent mailed on or before the Interest Payment Date by first class mail, postage prepaid, or upon satisfaction of certain conditions specified in the Indenture, by wire transfer or any other method acceptable to the Owner, to the person whose name appears in the Registrations Books as the Owner of such Bond as of the 15<sup>th</sup> day of the calendar month immediately preceding each Interest Payment Date, to the address of that person on the Registration Books, provided that the payment of principal of the Bond on the Maturity Date and the payment of the principal of the Bond and any premium due upon the redemption thereof shall be payable upon presentation and surrender thereof at maturity or earlier redemption at the office of the Paying Agent in Los Angeles, California.

This Bond shall bear interest until the principal amount has been paid; provided, however, that if at the Maturity Date, or if at the redemption date of any principal amount of this Bond which has been duly called for redemption as provided in the Indenture, funds are available for the payment or redemption thereof in full accordance with the terms of the Indenture, such principal amount shall then cease to bear interest.

This Bond is subject to redemption as set forth in the Indenture.

This Bond is issued by the Authority under the JPA Act and the Indenture for the purpose of funding, pursuant to that certain Loan Agreement, dated as of \_\_\_\_ 1, 20\_\_ (the Loan Agreement”), by and between the Authority and the County, a loan (the “Loan”) to the County of certain distributed generation renewable energy sources and energy and water efficiency improvements pursuant to the Los Angeles County Energy Program established by the Board of Supervisors of the County pursuant to the Contractual Assessment Law. The obligation of the County to make payments to the Authority of principal and interest on the Loan is a limited obligation secured only as set forth in the Loan Agreement.

This Bond is secured by the Revenues, including the moneys in the Series \_\_\_\_\_ Account of the Debt Service Fund, and is payable exclusively out of such account. This

Bond and interest thereon are not secured by any other funds of the Authority or the County. Neither the credit of the County or the Authority nor the taxing power of the County is pledged for the payment of this Bond or the interest thereon, and no Owner of this Bond may compel the exercise of any taxing power by the County or force the forfeiture of any of its properties. The principal of, and premium (if any) and interest on this Bond are not a debt of the County nor a legal or equitable pledge, charge, lien or encumbrance upon any of the properties of the Authority or the County, or upon any of their income, receipts or revenues, other than the Revenues and the funds described in the Indenture. The Authority has no taxing power.

This Bond is transferable by the Owner hereof, in person or by the Owner's attorney duly authorized in writing, at the office of the Paying Agent, subject to the terms and conditions provided in the Indenture, including the payment of certain charges, if any, upon exchange, transfer, surrender or cancellation of this Bond. Upon transfer, a new registered Bond or Bonds, of [any authorized denomination or denominations], of the same maturity, and for the same aggregate principal amount, will be issued to the transferee in exchange therefor.

The Paying Agent shall not be required to exchange or register the transfer of Bonds during the 15 days immediately preceding any Interest Payment Date or of any Bonds selected for redemption in advance of maturity.

The Paying Agent and the Authority may treat the Owner hereof as the absolute owner for all purposes, and the Paying Agent and the Authority shall not be affected by any notice to the contrary.

This Bond or any portion of it in the amount of \$5,000 or any integral multiple thereof, or in such other denomination or denominations as determined by the Authority Treasurer in accordance with the Indenture, is subject to redemption and payment prior to maturity as set forth in the Indenture.

This Bond shall not be entitled to any benefit under the JPA Act or the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon endorsed shall have been dated and signed by the Paying Agent.

[The remainder of this page is intentionally left blank.]

THE AUTHORITY HAS CERTIFIED, RECITED AND DECLARED that all things, conditions and acts required by the Constitution and laws of the State of California and the Indenture to exist, to have happened and to have been performed precedent to and in the execution, authentication and the delivery of this Bond, do exist, have happened and have been performed in due time, form and manner, as required by law and the Indenture.

IN WITNESS WHEREOF, the Authority has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signatures of its Chair and Treasurer, all as of the dated date identified above.

LOS ANGELES COUNTY PUBLIC WORKS  
FINANCING AUTHORITY

By: \_\_\_\_\_  
Chair of the Board of Directors

ATTEST:

By: \_\_\_\_\_  
Treasurer

PAYING AGENT'S CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture which has been authenticated and registered on the \_\_ day of \_\_\_\_\_, 20\_\_.

TREASURER AND TAX COLLECTOR OF THE  
COUNTY, as Paying Agent

By: \_\_\_\_\_

[FORM OF ASSIGNMENT]

For value received the undersigned do(es) hereby sell, assign and transfer unto \_\_\_\_\_, whose tax identification number is \_\_\_\_\_, the within-mentioned registered Bond and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney to transfer the same on the books of the Fiscal Agent with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed:

NOTE: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

NOTICE. Signature must be guaranteed by a member of an institution which is a participant in the Securities Transfer Agent Medallion Program i STAMP or other similar program.

**EXHIBIT B**

**(LETTERHEAD OF THE APPLICABLE DEPARTMENT OF THE  
COUNTY OF LOS ANGELES)**

**PAYMENT REQUEST FORM**

Auditor-Controller, as Fiscal Agent  
500 West Temple Street, Room 603  
Los Angeles, CA 90012

**SUBJECT: REQUEST FOR PAYMENT OF COSTS OF ISSUANCE  
LOS ANGELES COUNTY PUBLIC WORKS FINANCING AUTHORITY  
LOS ANGELES COUNTY ENERGY PROGRAM  
CONTRACTUAL ASSESSMENT REVENUE BONDS, SERIES \_\_**

The Fiscal Agent is hereby requested to pay from the Costs of Issuance Fund established pursuant to the Indenture, dated as of \_\_\_\_\_ 1, 2010, executed by and among the Los Angeles County Public Works Financing Authority, the County of Los Angeles, the Treasurer and Tax Collector of the County of Los Angeles, as Paying Agent, and the Auditor-Controller of the County of Los Angeles, as Fiscal Agent, to the person, corporation or other entity designated below as Payee, the sum set forth below such designation, in payment of the Costs of Issuance described below. The amount shown below is due and payable under a purchase order, contract or other authorization with respect to the Costs of Issuance described below and has not formed the basis of any prior request for payment.

Payee:

Address:

Amount: \$ \_\_\_\_\_

Description:

Description of Costs of Issuance or portion thereof accepted by the County of Los Angeles and authorized to be paid to the Payee.

Executed by the Authorized  
Representative of the County  
of Los Angeles

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Dated: \_\_\_\_\_

Title: \_\_\_\_\_

Payment Request No. \_\_\_\_\_

Attachment: (Attach duplicate original of Payee's statement(s) or invoice(s))

LOAN AGREEMENT

Dated as of \_\_\_\_\_ 1, 2010

by and between the

COUNTY OF LOS ANGELES, CALIFORNIA,

and the

LOS ANGELES COUNTY PUBLIC WORKS FINANCING AUTHORITY

Relating to

Los Angeles County Public Works Financing Authority  
Los Angeles County Energy Program  
Contractual Assessment Revenue Bonds, Series A

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## **LOAN AGREEMENT**

THIS LOAN AGREEMENT (this “Loan Agreement”) is made and entered into as of \_\_\_\_\_ 1, 2010, by and between the COUNTY OF LOS ANGELES, a political subdivision of the State of California (the “County”), and the LOS ANGELES COUNTY PUBLIC WORKS FINANCING AUTHORITY, a joint powers authority organized and existing under the laws of the State of California (the “Authority”);

### ***WITNESSETH:***

WHEREAS, Chapter 29 of Part 3 of Division 7 of the Streets and Highways Code of the State of California (the “Contractual Assessment Law”) authorizes counties to assist free and willing property owners in financing the installation of distributed generation renewable energy sources and energy and water efficiency improvements (the “Improvements”) that are permanently fixed to residential, commercial, industrial or other real property through a contractual assessment program; and

WHEREAS, the Board of Supervisors (the “Board of Supervisors”) of the County of Los Angeles, a political subdivision of the State of California (the “County”), previously approved a resolution (the “Resolution of Intention”) declaring its intention to order the implementation of a contractual assessment program to finance Improvements pursuant to the Contractual Assessment Law; and

WHEREAS, following notice duly given and a hearing in accordance with applicable law, the Board of Supervisors approved a resolution (the “Resolution Establishing the LACEP”) which, among other things, authorized the establishment of the Los Angeles County Energy Program (the “LACEP”) to finance the acquisition, construction and installation of the Improvements on properties in the County through the use of contractual assessments pursuant to the Contractual Assessment Law; and

WHEREAS, pursuant to LACEP, the County will enter into contractual assessment agreements (each, an “Assessment Contract”) with free and willing property owners (the “Property Owners”) pursuant to which the County will assist in financing the acquisition, construction and installation of Improvements on or in such owners’ respective properties and levy contractual assessments (each, an “Assessment”) on the applicable properties in the amounts set forth in the Assessment Contracts; and

WHEREAS, the Board of Directors (the “Board of Directors”) of the Los Angeles County Public Works Financing Authority (the “Authority”) previously approved a resolution (the “Authority Resolution”) authorizing the issuance of its Los Angeles County Energy Program Contractual Assessment Revenue Bonds (the “Bonds”) from time to time in one or more series under and pursuant to Articles 1 through 4 (commencing with Section 6500) of the Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (as amended, the “JPA Act”) for the purpose of funding loans (the “Loans”) to the County, which will disburse such loan amounts and any other moneys available therefor to free and willing property owners to finance the Improvements pursuant to LACEP; and

WHEREAS, the Authority will issue its \$\_\_\_\_\_ aggregate principal amount of Los Angeles County Energy Program Contractual Assessment Revenue Bonds, Series A (the “Series A Bonds”) pursuant to the terms of that certain Indenture, dated as of \_\_\_\_\_ 1, 2010 (the “Indenture”), by and among the County, the Authority, the Auditor-Controller of the County, as fiscal agent thereunder, and the Treasurer and Tax Collector of the County, as paying agent thereunder; and

WHEREAS, this Loan Agreement represents one such loan by the Authority to the County with respect to such the Series A Bonds; and

WHEREAS, the County and the Authority have determined that all acts and proceedings required by law necessary to make this Loan Agreement, when executed by the County and the Authority, the valid, binding and legal obligation of the County and to constitute this Loan Agreement a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Loan Agreement have been in all respects duly authorized;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the parties hereto do hereby agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.1. Definitions. Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Loan Agreement shall have the respective meanings which such terms have in the Indenture. In addition, the following terms defined in this Section 1.1 shall, for all purposes of this Loan Agreement, have the respective meanings herein specified.

“Assessment Contracts” means the agreements by and between the County and the free and willing property owners identified on the “Assessment Contract Schedule” attached as Exhibit B to this Loan Agreement.

“Assessment Installments” means the installments of principal, interest and premium, if any, to be paid on the unpaid Assessments by the owners of the real properties described in Exhibit B attached hereto.

“Assessment Revenues” means the revenues received by the County in each Fiscal Year from the collection of the annual Assessment Installments, including any interest and penalties thereon and the proceeds of the exercise of any of the remedies for delinquent payments available under the related Assessment Contracts or under the Contractual Assessment Law.

“Assessments” means the unpaid assessments levied by the County pursuant to the Contractual Assessment Law and the related Assessment Contracts, constituting a first lien and charge upon the real properties described in Exhibit B attached hereto.

“Event of Default” means any of the events described in Section 5.1 of this Loan Agreement.

“Loan” means the loan made by the Authority to the County pursuant to Section 2.1 of this Loan Agreement.

“Loan Agreement” means this Loan Agreement by and between the County and the Authority, as amended or supplemented pursuant to the provisions hereof.

“Loan Maturity Date” shall be the same date as the Maturity Date with respect to the Bond.

“Series A Repayment Account” means the account by that name established and held hereunder by the County within the Energy Fund pursuant to Section 3.2 of this Loan Agreement.

“Written Request of the County” means a request in writing signed by an Authorized Representative of the County.

Section 1.2. Rules of Construction. All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Loan Agreement, and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Loan Agreement as a whole and not to any particular Article, Section or subdivision hereof.

## ARTICLE II

### THE LOAN; ESTABLISHMENT OF FUNDS

Section 2.1. Authorization. The Authority hereby agrees to lend to the County, from the proceeds of the sale of the Series A Bonds deposited in the Loan Fund established under the Indenture, the aggregate principal amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_) under and subject to the terms of this Loan Agreement, the Contractual Assessment Law, and the JPA Act. This Loan Agreement constitutes a continuing agreement with the Authority to secure the full and final payment of the Loan, subject to the covenants, agreements, provisions and conditions herein contained.

Section 2.2. Terms of Loan. The principal of the Loan shall be payable no later than the second (2nd) Business Day prior to the Loan Maturity Date. Interest on the Loan shall be calculated on the basis of a 360-day year of twelve 30-day months. The first semi-annual installment of interest shall accrue from and including the Closing Date to but not including the next succeeding Interest Payment Date. Each succeeding semi-annual installment of interest shall accrue from and including the Interest Payment Date occurring at the beginning of such semi-annual period to but not including the next succeeding Interest Payment Date. Principal of and interest on the Loan shall be payable in each of the years and in the amounts set forth on Exhibit A hereto.

Principal of and interest on the Loan shall be payable by the County to the Authority from moneys deposited in the Series A Repayment Account pursuant to Section 3.2 hereof, in immediately available funds which constitute lawful money of the United States of America. Payment of such principal and interest shall be secured, and amounts for the payment thereof shall be deposited by the Authority with the Fiscal Agent at the times, as set forth in Article III hereof.

Section 2.3. Prepayment.

(a) Mandatory Prepayment. (i) The principal of the Loan shall be prepaid prior to maturity in whole or in part [on the Business Day preceding] any Interest Payment Date, from prepaid assessments on deposit and available for such purpose in the Series A Repayment Account of the Energy Fund, at a prepayment price equal to 10\_% of the principal amount of the Loan to be prepaid and accrued interest to the date fixed for redemption of the related Bonds.

(ii) The Loan shall be prepaid prior to maturity in whole on any date from proceeds of Refunding Bonds and other monies available therefor on deposit in the escrow fund for the Series A Bonds at a prepayment price equal to 10\_% of the principal amount of the Loan to be prepaid and accrued interest thereon to the date fixed for redemption of the Series A Bonds. Upon deposit of the moneys in the escrow fund for prepayment in full of the Loan hereunder and satisfaction of Section 9.1 of the Indenture, the Loan will be deemed paid within the meaning and with the effect expressed this Loan Agreement.

(b) Optional Prepayment.

(i) The principal of the Loan may be prepaid prior to maturity in whole or in part [on the Business Day preceding] any Interest Payment Date, from any available source of funds in the Series A Repayment Account of the Energy Fund, other than prepaid assessments referenced in the foregoing paragraph (a), at a prepayment price equal to the principal amount of the Loan to be prepaid, a prepayment premium equal to 10\_% of the principal amount of the Loan to be prepaid, and accrued interest to the date fixed for redemption of the related Bonds.

(c) The County shall give \_\_ days' prior written notice to the Paying Agent of its election to prepay all or a portion of the Loan under this Section 2.3, and shall transfer to the Fiscal Agent all amounts required for such prepayment.

Section 2.4. Application of Loan Proceeds. In furtherance of Section 4.3 of the Indenture, the County shall provide to the Fiscal Agent one or more Written Requests of the County requesting disbursement of the proceeds of the Loan to the property owners listed on Exhibit B hereof from amounts on deposit in the Loan Fund (or an account therein, if any) established under the Indenture, on the Closing Date or such other date or dates specified in such Written Request(s) of the County. After all amounts required to be disbursed under and pursuant to the Assessment Contract listed on Exhibit B hereof have been disbursed, moneys on deposit in the Loan Fund (or the applicable account therein, if any) in an amount equal to the difference between (i) the total set forth in the column titled "Approved Disbursement Amount" on

Exhibit B, and (ii) all amounts disbursed to the property owners listed on Exhibit B, shall be used by the County to prepay the Loan pursuant to Section 2.3(b) of this Loan Agreement.

### ARTICLE III

#### PLEDGE OF ASSESSMENT REVENUES; APPLICATION OF FUNDS

Section 3.1. Pledge of Assessment Revenues. The Loan shall be secured by a pledge of, security interest in and lien on all of the related Assessment Revenues and the amounts in the Series A Repayment Account created hereunder. The Assessment Revenues are hereby allocated in their entirety to the payment of certain costs and expenses [up to a maximum of \$\_\_\_\_\_,] incurred by the County in connection with the administration of LACEP and payment of the principal of and interest on the Loan.

Section 3.2. Series A Repayment Account; Deposit of Assessment Revenues. There is hereby established a special trust account within the Energy Fund to be known as the “Series A Repayment Account” held by the Treasurer. The County shall deposit all Assessment Revenues in the Series A Repayment Account promptly upon receipt thereof. Any amounts remaining in the Series A Repayment Account after payment in full of the Loan and the interest thereon shall be used by the County for the benefit of LACEP.

Section 3.3. Transfers of Assessment Revenues to Authority. (a) No later than the Business Day preceding each Interest Payment Date commencing \_\_\_\_\_, the County shall withdraw from the Series A Repayment Account and (i) transfer to the Program Expense Fund an amount equal to [formula to come], up to a maximum of one-half of the amount set forth in Section 3.1 hereof, and (ii) transfer to the Authority (or to the Fiscal Agent on behalf of the Authority), for deposit in the Debt Service Fund amounts sufficient to pay the interest then due on the Loan pursuant to Section 2.2 of this Loan Agreement.

(b) No later than the Business Day preceding each Principal Payment Date, the County shall withdraw from the Series A Repayment Account and transfer to the Authority (or to the Fiscal Agent on behalf of the Authority), for deposit in the Debt Service Fund, an amount sufficient to pay in full the portion of the principal of the Loan then due.

(c) No later than the Business Day preceding each Interest Payment Date commencing \_\_\_\_\_, the County shall withdraw from the Series A Repayment Account and transfer to the Authority (or to the Fiscal Agent on behalf of the Authority), for deposit in the Reserve Fund an amount that will, together with the amounts on deposit in the Reserve Fund, equal the Reserve Requirement.

(d) On each September 2, all moneys in the Series A Repayment Account in excess of the foregoing amount shall, to the extent permitted by law, be applied as follows:

(i) first, the moneys shall be transferred to the Program Expense Fund (in which case such moneys shall be released from the pledge and lien hereunder), unless the Treasurer determines in his sole discretion that amounts then on deposit in the Program Expense Fund are sufficient to pay anticipated costs and expenses to be incurred

by the County in connection with administration of LACEP for the next 12 months and anticipated costs and expenses to be incurred by the County, the Authority, the Paying Agent and the Fiscal Agent in connection with the Bonds for the next twelve (12) months, in which event the Treasurer may, but is not required to, apply such excess monies in accordance with paragraph (ii) below; and

(ii) second, the moneys shall be retained in the Series A Repayment Account, or, at the option of the County, the moneys shall be applied to prepay the Loan pursuant to Section 2.3(b).

Section 3.4. Program Expense Fund. There has been heretofore established a fund within the Energy Fund called the Program Expense Fund and held by the County. There will be deposited in the Program Expense Fund (i) the amounts received by the Treasurer with respect to each parcel in each Fiscal Year in satisfaction of the Annual Administrative Assessment pursuant to the Assessment Contracts and (ii) the amounts, exclusive of Revenues, deducted from Assessments and set-aside to pay the costs and expenses[, up to a maximum of \$ \_\_\_\_\_ in each Fiscal Year], incurred by the County in connection with the capitalized costs of establishing and administering LACEP. Amounts on deposit in the Program Expense Fund shall be used by the County to pay for ordinary and necessary costs of administering the levy and collection of the Assessments and all other administrative costs and incidental expenses related to the Series A Bonds, as well as the capitalized costs of establishing and administering LACEP. On each June 30, amounts in excess of the Annual Administrative Assessments expected to be incurred through the next succeeding September 2 may be applied as a credit upon the assessment levied for the upcoming fiscal year for Annual Administrative Assessments. Any surplus remaining in the Program Expense Fund after payment or provision for payment of all Administrative Expenses and other costs in connection with establishing and administering LACEP incurred or expected to be incurred through and including activities relating to the payment in full of the Bonds may be transferred to the County for the benefit of LACEP.

Section 3.5. Investment of Moneys; Valuation of Investments. All moneys in the Series A Repayment Account shall be invested by the County solely in Authorized Investments, maturing not later than the respective dates on which such moneys are estimated by the County to be required to be deposited with the Authority pursuant to Section 3.3 hereof. All interest, profits and other income received from the investment of moneys in any fund or account held under this Loan Agreement shall be deposited in such fund or account. Notwithstanding anything to the contrary contained in this paragraph, an amount of interest received with respect to any investment equal to the amount of accrued interest, if any, paid as part of the purchase price of such investment shall be credited to the fund from which such accrued interest was paid. Authorized Investments acquired as an investment of moneys in any fund or account held under this Loan Agreement shall be credited to such fund.

For the purpose of determining the amount in any fund or account hereunder, the value of Authorized Investments credited to such fund shall be calculated at the lesser or (a) the original cost thereof (excluding brokerage commissions and accrued interest, if any), or (b) the principal amount thereof.

## ARTICLE IV

### OTHER COVENANTS OF THE COUNTY

Section 4.1. Punctual Payment. The County will punctually pay or cause to be paid the principal of and interest on the Loan together with any prepayment premiums thereon in strict conformity with the terms of this Loan Agreement, and it will faithfully observe and perform all of the conditions, covenants and requirements of this Loan Agreement.

Section 4.2. Limited Obligation. The Loan is a limited obligation of the County and is payable solely from and secured solely by related Assessment Revenues and the amounts in the Series A Repayment Account created hereunder.

Section 4.3. General. The County shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the County under the provisions of this Loan Agreement. The County warrants that upon the date of execution and delivery of this Loan Agreement, the conditions, acts and things required by law and this Loan Agreement to exist, to have happened and to have been performed precedent to and in the execution and delivery of such Loan Agreement do exist, have happened and have been performed and the execution and delivery of the Loan Agreement shall comply in all respects with the applicable laws of the State.

Section 4.4. Protection of Security and Rights of Authority. The County will preserve and protect the security of the Loan and the rights of the Authority thereto, and will warrant and defend their rights to such security against all claims and demands of all persons. From and after the delivery of the Loan Agreement by the County, the Loan shall be incontestable by the County.

Section 4.5. Against Encumbrances. The County will not encumber, pledge or place any charge or lien upon any of the related Assessment Revenues or other amounts pledged to the related Loan superior to or on a parity with the pledge and lien herein created for the benefit of the Loan, except as permitted by this Loan Agreement.

Section 4.6. Collection of Assessment. The County shall comply with all requirements of the Contractual Assessment Law and applicable State law so as to assure the timely collection of the unpaid Assessment.

Section 4.7. Accounting Records and Statements. The County will keep or cause to be kept proper accounting records in which complete and correct entries shall be made of all transactions relating to the receipt, deposit and disbursement of the Assessment Revenues, and such accounting records shall be available for inspection upon five (5) Business Days' written notice by the Authority or the Fiscal Agent or their respective agent duly authorized in writing at reasonable hours and under reasonable conditions.

Section 4.8. Further Assurances. The County will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of its duties under

this Loan Agreement, and for the better assuring and confirming unto the Authority the rights and benefits provided in this Loan Agreement.

Section 4.9. Payment of Expenses; Indemnification. At the request or direction of the Authority, the County shall pay from the Program Expense Fund (but only to the extent moneys are on deposit therein) the costs and expenses incurred by the Authority in connection with the issuance of the Bond, including all compensation to the Fiscal Agent from time to time for all services rendered this Loan Agreement and the Indenture, including but not limited to all reasonable expenses, charges, legal and consulting fees and other disbursements and those of its attorneys, agents and employees, incurred in and about the performance of its powers and duties hereunder and thereunder. Upon the occurrence of an Event of Default, the Fiscal Agent (if other than the Auditor) shall have a first lien on the Assessment Revenues and the Series A Repayment Account to secure the payment to the Fiscal Agent of all fees, costs and expenses, including reasonable compensation to its experts, attorneys and counsel incurred in declaring such Event of Default and in exercising the rights and remedies set forth in Article V hereof.

The County further covenants and agrees to indemnify and save the Fiscal Agent (if other than the Auditor) and its officers, directors, agents and employees, harmless against any losses, expenses and liabilities which it may incur arising out of or in the exercise and performance of its powers and duties hereunder, including the costs and expenses of defending against any claim of liability, but excluding any and all losses, expenses and liabilities which are due to the negligence or intentional misconduct of the Fiscal Agent, its officers, directors, agents or employees. The obligations of the County under this paragraph shall survive the resignation or removal of the Fiscal Agent under the Indenture, this Loan Agreement and payment of the Loan and the discharge of this Loan Agreement.

## ARTICLE V

### EVENTS OF DEFAULT AND REMEDIES

Section 5.1. Events of Default. The following events shall constitute Events of Default hereunder:

(a) Default in the due and punctual payment of the principal of or prepayment premium, if any, on the Loan when and as the same shall become due and payable, whether at maturity as therein expressed, by declaration or otherwise;

(b) Default in the due and punctual payment of the interest on the Loan when and as the same shall become due and payable; or

(c) Default by the County in the observance of any of the agreements, conditions or covenants on its part in this Loan Agreement (other than a payment default referred to in subparagraphs (a) and (b) above), and the continuation of such default for a period of 60 days after the County shall have been given notice in writing of such default by the Authority or the Fiscal Agent; provided that if within 60 days the County has commenced curing of the default and diligently pursues elimination thereof, such period shall be extended to permit such default to be eliminated.

Section 5.2. Remedies Not Exclusive; Non-Waiver. No remedy conferred hereby upon the Authority is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by the JPA Act, Chapter 29, or any other law of the State. No waiver of any default or breach of duty or contract by the Authority shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies on said subsequent default or breach. No delay or omission of the Authority to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed as a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Authority may be enforced and exercised as often as may be deemed expedient. In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and the Authority shall prevail, the Authority shall be entitled to receive reimbursement for reasonable costs, expenses, outlays and attorney's fees and should said suit, action or proceeding be abandoned, or be determined adversely to the Authority then, and in every such case, the Authority and the Authority shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

Section 5.3. Limited Liability of the County to the Authority. Except for the collection of the Assessment Revenues and the observance and performance of the other conditions, covenants and terms contained herein or in the Contractual Assessment Law required to be observed or performed by it, the County shall not have any obligation or liability to the Authority with respect to this Loan Agreement. Pursuant to the Resolution of Intention relating to these proceedings, the County has determined that no funds of the County will be available to pay principal of, premium, if any, or interest on the Bonds. The County has determined that pursuant to the Contractual Assessment Law, the County will not obligate itself to advance available funds from the County's treasury to cure any deficiency which may occur in the Debt Service Fund under the Indenture.

Section 5.4. Action by Authority Upon Default. In the event the County fails to take any action to eliminate an Event of Default under Section 5.1 hereof, the Authority may institute any suit, action, mandamus or other proceeding in equity or at law for the protection or enforcement of any right under this Loan Agreement, but only if the Authority has first made written request of the County, after the right to exercise such powers or right of action shall have occurred, and shall have afforded the County a reasonable opportunity either to proceed to exercise the powers granted herein or granted under law or to institute such action, suit or proceeding in its name and unless also, the County shall have been offered reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the County shall have refused or neglected to comply with such request within a reasonable time. Any moneys recovered in such suit, action, mandamus or other proceedings shall be applied first to the payment of the reasonable costs and expenses of the Authority in bringing such suit, action, mandamus or other proceeding, including reasonable compensation to its agents and attorney.

## ARTICLE VI

### MISCELLANEOUS

Section 6.1. Discharge of Loan Agreement. If the County shall pay and discharge the entire indebtedness on the Loan in any one or more of the following ways and shall concurrently therewith discharge the indebtedness of the Series A Bonds in full:

(a) by well and truly paying or causing to be paid the principal of and interest and prepayment premiums (if any) on the Loan, as and when the same become due and payable;

(b) by irrevocably depositing with the Fiscal Agent, in trust, at or before maturity, cash in an amount which, together with the available amounts then on deposit in any of the funds and accounts maintained pursuant to the Indenture in connection with the Series A Bonds or this Loan Agreement, is fully sufficient to pay all principal of and interest and prepayment premiums (if any) on the Loan; or

(c) by irrevocably depositing with the Fiscal Agent or any other fiduciary, in trust, Federal Securities pursuant to Section 9.1(c) of the Indenture in such amount as an Independent Public Accountant shall determine will, together with the interest to accrue thereon and available moneys then on deposit in the funds and accounts established pursuant to the Indenture or pursuant to this Loan Agreement, be fully sufficient to pay and discharge the indebtedness on the Loan (including all principal, interest and prepayment premiums) at or before maturity;

then, at the election of the County but only if all other amounts then due and payable hereunder shall have been paid or provision for their payment made, the pledge of and lien upon the Assessment Revenues and other funds provided for in this Loan Agreement and all other obligations of the Authority and the County under this Loan Agreement with respect to the Loan shall cease and terminate, except only the obligation of the County to pay or cause to be paid to the Authority, from the amounts so deposited with the Authority, the Paying Agent, the Fiscal Agent, or such other fiduciary, all sums due with respect to the Loan and all expenses and costs of the Authority, the Paying Agent and the Fiscal Agent. Notice of such election shall be filed with the Authority, the Paying Agent, and the Fiscal Agent.

Any funds thereafter held by the County hereunder, which are not required for purposes of this Section 6.1, shall be transferred to the County for the benefit of LACEP.

Section 6.2. Amendment. This Loan Agreement may be amended by the parties hereto but only to the extent such amendment shall not be inconsistent with the terms and provisions hereof and only for the following purposes:

(a) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provision with respect to matters or questions arising under this Loan Agreement or in any supplemental indenture, provided that such action shall not adversely affect the interests of the Authority;

(b) to add to the covenants and agreements of and the limitations and the restrictions upon the County contained in this Loan Agreement other covenants, agreements, limitations and restrictions to be observed by the County which are not contrary to or inconsistent with this Loan Agreement as theretofore in effect; and

(c) to modify, alter, amend or supplement this Loan Agreement in any other respect which is not materially adverse to the interests of the Authority.

The Authority covenants that the Indenture shall not be amended without the prior written consent of the County.

Section 6.3. Notice. Any notice, demand, direction, request or other instrument authorized or required by this Loan Agreement to be given to or filed with the Authority, the County, the Paying Agent or the Fiscal Agent shall be deemed to have been sufficiently given or filed for all purposes of this Loan Agreement if and when delivered to or sent in accordance with Section 9.8 of the Indenture.

Section 6.4. Payment on Business Day. In any case where the date of the maturity of interest or of principal (and premium, if any) of the Loan or the date fixed for prepayment of the Loan or any portion thereof or the date any action is to be taken pursuant to this Loan Agreement is other than a Business Day, the payment of interest or principal (and premium, if any) or the action need not be made on such date but may be made on the next succeeding day which is a Business Day with the same force and effect as if made on the date required and no interest shall accrue for the period after such date.

Section 6.5. Benefits Limited to Parties. Nothing in this Loan Agreement, expressed or implied, is intended to give to any person other than the County and the Authority, any right, remedy or claim under or by reason of this Loan Agreement. All covenants, stipulations, promises or agreements in this Loan Agreement contained by and on behalf of the County shall be for the sole and exclusive benefit of the Authority, of any Fiscal Agent (if not the Auditor) and of any Paying Agent (if not the Treasurer) acting under the Indenture for the benefit of the Owners of the Bond.

Section 6.6. No Personal Liability. The County and the officer, agent or employee thereof shall not be individually or personally liable for the payment of the principal of or interest on the Bonds; but nothing herein contained shall relieve any such entity, officer, agent or employee from the performance of any official duty provided by law.

Section 6.7. Severability. If any covenant, agreement or provision, or any portion thereof, contained in this Loan Agreement, or the application thereof to any person or circumstance, is held to be unconstitutional, invalid or unenforceable, the remainder of this Loan Agreement and the application of any such covenant, agreement or provision, or portion thereof, to other persons or circumstances, shall be deemed severable and shall not be affected thereby, and this Loan Agreement and the related Loan shall remain valid and the parties hereto shall retain all valid rights and benefits accorded to them under this Loan Agreement and the Constitution and laws of the State.

Section 6.8. Headings. Any headings preceding the texts of the several Articles hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Loan Agreement, nor shall they affect its meaning, construction or effect.

Section 6.9. Governing Law. All provisions of this Loan Agreement are to be governed by the laws of the State.

Section 6.10. Counterparts. This Loan Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original; and such counterparts shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the COUNTY OF LOS ANGELES and the LOS ANGELES COUNTY PUBLIC WORKS FINANCING AUTHORITY, have caused this Loan Agreement to be signed by their respective officers, all as of the day and year first above written.

COUNTY OF LOS ANGELES

By: \_\_\_\_\_  
Chair of the Board of Supervisors

ATTEST:

SACHI A. HAMAI  
Executive Officer-Clerk  
of the Board of Supervisors

By: \_\_\_\_\_  
Deputy

LOS ANGELES COUNTY PUBLIC WORKS  
FINANCING AUTHORITY

By: \_\_\_\_\_  
Chair of the Board of Directors

ATTEST:

Secretary

By: \_\_\_\_\_  
Deputy

**EXHIBIT A**

**LOAN REPAYMENT SCHEDULE**

<u>Date</u>	<u>Principal Amount</u>	<u>Interest</u>	<u>Total</u>
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**EXHIBIT B**

**ASSESSMENT CONTRACT SCHEDULE**

<b>Property Owner(s)</b>	<b>Date of Assessment Contract</b>	<b>Approved Disbursement Amount</b>
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[2ND ATTACHMENT]

City	COG Affiliation	Date of CC Meeting	Date of Adoption	Resolution Submitted to LA County?	Notes	Supervisory District
Alhambra	San Gabriel Valley	7/13/10	7/13/10	Yes		5
Arcadia	San Gabriel Valley	7/20/10	7/20/10	Yes		5
Artesia	Gateway Cities	6/14/10	6/14/10	Yes		4
Avalon	Gateway Cities	August	August	Yes		4
Baldwin Park	San Gabriel Valley	6/16/10	6/16/10	Yes		1
Bell Gardens	Gateway Cities	6/14/10	6/14/10	Yes		1
Bellflower	Gateway Cities	6/28/10	6/28/10	Yes		4
Beverly Hills	Westside Cities	6/3/10	6/3/10	Yes		3
Bradbury	San Gabriel Valley	6/15/10	6/15/10	Yes		5
Burbank	San Fernando Valley	7/6/10	7/6/10	Yes		5
Calabasas	Las Virgenes-Malibu	10/13/10	10/13/10	Yes		3
Carson	South Bay	6/15/10	6/15/10	Yes	Candice Bohanen is tr	2
Cerritos	Gateway Cities	6/24/10	6/24/10	Yes		4
Claremont	San Gabriel Valley	6/22/10	6/22/10	Yes		5
Commerce	Gateway Cities	7/6/10	7/6/10	Yes		1
Covina	San Gabriel Valley	6/15/10	6/15/10	Yes		5
Cudahy	Gateway Cities	7/6/10	7/6/10	Yes		1
Culver City	Westside Cities	6/28/10	6/28/10	Yes		2
Diamond Bar	San Gabriel Valley	6/15/10	6/15/10	Yes		4
Downey	Gateway Cities	6/8/10	6/15/10	Yes		4
Duarte	San Gabriel Valley	6/8/10	6/8/10	Yes		5
El Monte	San Gabriel Valley	7/6/10	7/6/10	Yes		1
El Segundo	South Bay	7/20/10	7/6/10	Yes		4
Glendale	San Fernando Valley	7/6/10	7/6/10	Yes		5
Glendora	San Gabriel Valley	7/3/10	7/3/10	Yes		5
Hawaiian Gardens	Gateway Cities	7/27/10	7/27/10	Yes		4
Hawthorne	South Bay	6/22/10	6/22/10	Yes		2
Hermosa Beach	South Bay	6/8/10	6/8/10	Yes		4
Hidden Hills	Las Virgenes-Malibu	6/14/10	6/14/10	Yes		3
Huntington Park	Gateway Cities	6/7/10	6/7/10	Yes		1
Industry	San Gabriel Valley	?	6/2011?	Yes		1
Inglewood	South Bay	7/27/10	7/27/10	Yes		2
Irwindale	San Gabriel Valley			Yes		1
La Cañada Flintridge	San Gabriel Valley	6/21/10	6/21/10	Yes		5
La Habra Heights	Gateway Cities	7/8/10	7/8/10	Yes		4
La Mirada	Gateway Cities	6/22/10	6/22/10	Yes		4
La Puente	San Gabriel Valley	12/14/2010	12/14/2010	Yes		1
La Verne	San Gabriel Valley	6/7/10	6/7/10	Yes		5

City	COG Affiliation	Date of CC Meeting	Date of Adoption	Resolution Submitted to LA County?	Notes	Supervisory District
Lancaster	North County	6/8/10	6/8/10	Yes		5
Lawndale	South Bay	10/18/10	10/18/10	Yes		2
Lomita	South Bay	6/21/10	6/21/10	Yes		4
Long Beach	Gateway Cities	6/22/10	6/22/10	Yes		4
Los Angeles	San Fernando Valley	3/29/11		Yes		1-5
Lynwood	Gateway Cities	7/6/10	7/6/10	Yes		2
Malibu	Las Virgenes-Malibu	6/28/10	6/28/10	Yes		3
Manhattan Beach	South Bay	6/15/10	6/15/10	Yes		4
Monrovia	San Gabriel Valley	7/6/10	7/6/10	Yes		5
Norwalk	Gateway Cities	7/20/10	7/20/10	Yes		4
Palmdale	North County	6/2/10	6/2/10	Yes		5
Palos Verdes Estates	South Bay	6/22/10	6/22/10	Yes		4
Paramount	Gateway Cities	7/6/10	7/6/10	Yes		4
Pico Rivera	Gateway Cities	7/13/10	7/13/10	Yes		1
Rancho Palos Verdes	South Bay	6/15/10	6/15/10	Yes		4
Redondo Beach	South Bay	6/22/10	6/22/10	Yes		4
Rolling Hills	South Bay	6/14/10	6/14/10	Yes		4
Rolling Hills Estates	South Bay	6/22/10	6/22/10	Yes		4
Rosemead	San Gabriel Valley	7/13/10	7/13/10	Yes		1
San Dimas	San Gabriel Valley	6/8/10	6/8/10	Yes	Kevin Fry is the contact	5
San Gabriel	San Gabriel Valley	4/8/2011	4/7/2011	Yes		5
San Marino	San Gabriel Valley	7/14/10	6/9/10	Yes		5
Santa Clarita	San Fernando Valley	3/22/11	3/22/11	Yes		5
Santa Fe Springs	Gateway Cities	6/10/10	6/10/10	Yes		1
Santa Monica	Westside Cities	7/13/10	7/13/10	Yes		3
Signal Hill	Gateway Cities	6/1/10	6/1/10	Yes		4
South El Monte	San Gabriel Valley	6/22/10	6/22/10	Yes		1
South Gate	Gateway Cities	6/22/10	6/22/10	Yes		1
South Pasadena	San Gabriel Valley	7/7/10	7/7/10	Yes		5
Temple City	San Gabriel Valley	6/15/10	6/15/10	Yes		5
Torrance	South Bay	7/26/10	7/26/10	Yes		4
Walnut	San Gabriel Valley	6/23/10	6/23/10	Yes		1
West Covina	San Gabriel Valley	6/15/10	6/15/10	Yes		5
West Hollywood	Westside Cities	6/14/10	6/14/10	Yes		3
Whittier	Gateway Cities	7/27/10	7/27/10	Yes		4
Gardena	South Bay	9/14/10	9/14/10	No		2
Lakewood	Gateway Cities	6/22/10	6/22/10	No		4
Monterey Park	San Gabriel Valley	7/7/10	7/7/10	No		1

City	COG Affiliation	Date of CC Meeting	Date of Adoption	Resolution Submitted to LA County?	Notes	Supervisory District
Pasadena	San Gabriel Valley	6/14/10	6/14/10	No		5
Pomona	San Gabriel Valley	6/7/10	6/7/10	No		1
Sierra Madre	San Gabriel Valley	6/8/10	6/8/10	No		5
Agoura Hills	Las Virgenes-Malibu			No		3
Azusa	San Gabriel Valley			No		1
Bell	Gateway Cities			No		1
Compton	Gateway Cities			No		2
Maywood	Gateway Cities			No		1
Montebello	Gateway Cities AND San Gabriel Valley			No		1
San Fernando	San Fernando Valley			No		3
Vernon	Gateway Cities			No		1
Westlake Village	Las Virgenes-Malibu			No		3

<b>City</b>	<b>Resolution Submitted to LA County?</b>	<b>Date of Adoption</b>
Alhambra	Yes	7/13/2010
Arcadia	Yes	7/20/2010
Artesia	Yes	6/14/2010
Avalon	Yes	August
Baldwin Park	Yes	6/16/2010
Bell Gardens	Yes	6/14/2010
Bellflower	Yes	6/28/2010
Beverly Hills	Yes	6/3/2010
Bradbury	Yes	6/15/2010
Burbank	Yes	7/6/2010
Calabasas	Yes	10/13/2010
Carson	Yes	6/15/2010
Cerritos	Yes	6/24/2010
Claremont	Yes	6/22/2010
Commerce	Yes	7/6/2010
Covina	Yes	6/15/2010
Cudahy	Yes	7/6/2010
Culver City	Yes	6/28/2010
Diamond Bar	Yes	6/15/2010
Downey	Yes	6/15/2010
Duarte	Yes	6/8/2010
El Monte	Yes	7/6/2010
El Segundo	Yes	7/6/2010
Glendale	Yes	7/6/2010
Glendora	Yes	7/3/2010
Hawaiian Gardens	Yes	7/27/2010
Hawthorne	Yes	6/22/2010
Hermosa Beach	Yes	6/8/2010
Hidden Hills	Yes	6/14/2010
Huntington Park	Yes	6/7/2010
Industry	Yes	6/2011?
Inglewood	Yes	7/27/2010
Irwindale	Yes	
La Cañada Flintridge	Yes	6/21/2010
La Habra Heights	Yes	7/8/2010
La Mirada	Yes	6/22/2010
La Puente	Yes	12/14/2010
La Verne	Yes	6/7/2010
Lancaster	Yes	6/8/2010

<b>City</b>	<b>Resolution Submitted to LA County?</b>	<b>Date of Adoption</b>
Lawndale	Yes	10/18/2010
Lomita	Yes	6/21/2010
Long Beach	Yes	6/22/2010
Los Angeles	Yes	
Lynwood	Yes	7/6/2010
Malibu	Yes	6/28/2010
Manhattan Beach	Yes	6/15/2010
Monrovia	Yes	7/6/2010
Norwalk	Yes	7/20/2010
Palmdale	Yes	6/2/2010
Palos Verdes Estates	Yes	6/22/2010
Paramount	Yes	7/6/2010
Pico Rivera	Yes	7/13/2010
Rancho Palos Verdes	Yes	6/15/2010
Redondo Beach	Yes	6/22/2010
Rolling Hills	Yes	6/14/2010
Rolling Hills Estates	Yes	6/22/2010
Rosemead	Yes	7/13/2010
San Dimas	Yes	6/8/2010
San Gabriel	Yes	4/7/2011
San Marino	Yes	6/9/2010
Santa Clarita	Yes	3/22/2011
Santa Fe Springs	Yes	6/10/2010
Santa Monica	Yes	7/13/2010
Signal Hill	Yes	6/1/2010
South El Monte	Yes	6/22/2010
South Gate	Yes	6/22/2010
South Pasadena	Yes	7/7/2010
Temple City	Yes	6/15/2010
Torrance	Yes	7/26/2010
Walnut	Yes	6/23/2010
West Covina	Yes	6/15/2010
West Hollywood	Yes	6/14/2010
Whittier	Yes	7/27/2010
Gardena	No	9/14/2010
Lakewood	No	6/22/2010
Monterey Park	No	7/7/2010
Pasadena	No	6/14/2010
Pomona	No	6/7/2010

<b>City</b>	<b>Resolution Submitted to LA County?</b>	<b>Date of Adoption</b>
Sierra Madre	No	6/8/2010
Agoura Hills	No	
Azusa	No	
Bell	No	
Compton	No	
Maywood	No	
Montebello	No	
San Fernando	No	
Vernon	No	
Westlake Village	No	

[3RD ATTACHMENT]

# MEMORANDUM

To: Treasurer and Tax Collector  
County of Los Angeles

From: Dan Wiles and Paul Pender  
Fieldman, Rolapp & Associates

Re: March, 2010 Update: Financial Assumptions and Estimates for Los Angeles  
County Energy Program (LACEP) (AB 811 Contractual Assessments)

Date: March 5, 2010

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## Estimated Borrowing Cost for Program Participants

The LACEP contemplates providing individuals financing for renewable energy / energy efficient improvement projects averaging \$10,000 each. The total effective capital cost for participants, based on current assumptions, is estimated to be 9.02%. This rate is derived from the following:

- A \$250 upfront application fee
- A total assessment (or lien) amount of \$10,925

The \$10,925 assessment amount is based on the \$10,000 participant project, plus certain start-up and financing costs. Start-up costs per participant are estimated at \$460; with a \$250 upfront application fee, the resulting balance of \$210 is added to the amount assessed. Other costs included in the assessment amount are 1% for bond issuance costs and 6% for a bond reserve fund.

The repayment term is 15 years; this results in annual payments of approximately \$1,230 per year. It is further under consideration that an additional annual administrative assessment may be levied.

## Sources of Financing & Participation Levels

It is contemplated that the primary source of financing the County will access and in turn lend to participants is publicly issued assessment district bonds. Subject to market conditions, this bond rate is estimated to be 7.25%. If the total amount of participant demand is less than \$25 million, it is assumed the County will use privately procured interim financing. Based on current participation estimates, the only period in which interim financing is required is FY2011, or the first year of the program.

## Program Costs / Other Assumptions

It is assumed that the County program's administration and staff time will cost \$350,000 per year, subject to 2% annual inflation. These costs will be fully covered by the spread between the bond rate and the effective rate charged to participants. Other on-going costs such as marketing and application processing are included in the \$460 of start-up costs that will either be paid by the application fee or included in the assessment. Further details regarding program assumptions are provided on the next page.

# MEMORANDUM

<u>Program Assumptions</u>			
<b>Participation</b>			
	Number of Participants (Total, Years 1-15) <sup>3</sup>		337,461
	Application Fee <sup>1</sup>		\$250
	Average Project Disbursement Amount		\$10,000
	Loan Repayment Period (years)		15
	Loan Rate to Participants (Result)		7.45%
	Contractual Lien Amount (Assessment) <sup>5</sup>		\$10,925
	Effective Borrowing Rate to Participants (Result) <sup>8</sup>		9.02%
<b>Administration</b>			
	Program Cost & Fee Inflation		2.00%
	Program Cost and Fee Efficiencies		0.00%
	Annual County Staff Time <sup>1</sup>		\$250,000
	Annual Program Administration <sup>1</sup>		\$100,000
	Program Start-up Costs / Per Participant <sup>1</sup>		\$460
	County Staff Time	\$10	
	Education, Marketing, Customer Service	\$100	
	Application Processing	\$100	
	Printing and Shipping	\$25	
	Monitoring and Reporting	\$75	
	Loan Origination & Funds Disbursement	\$100	
	Financial Modeling & Payment Schedule	\$25	
	Lien Recordation	\$25	
<b>External Funding &amp; Finance</b>			
	Program Grant/Seed Money <sup>6</sup>		\$6mm
	Investment Earnings		2.00%
	Interim Loan Rate <sup>4,2</sup>		6.75%
	Interim Loan Amount <sup>7</sup>		\$25,000,000
	Term of Bonds Issued		15
	1915 Act Bond Interest Rate <sup>2</sup>		7.25%
	Fixed Costs of Bond Issuance		\$200,000
	Variable Costs of Bond Issuance (Underwriter's Discount)		1.00%
	Bond Reserve Fund		6.00%
1. Subject to program cost and fee inflation			
2. Subject to then market conditions			
3. Per Program Consultant Projections as of March, 2010.			
4. Per Program Consultant, equal to 1-mo LIBOR + 6.50%.			
5. Project amount plus: 6% reserve fund, 1% bond costs, and program origination costs less application fee paid			
6. Per County ISD			
7. Interim Loan(s) assumed to be used until \$25 million loan threshold for issuing bonds.			
8. Includes both loan rate on assessment amount and upfront application fee cost.			

[4TH ATTACHMENT]

**BEFORE THE  
FEDERAL HOUSING FINANCING AUTHORITY**

In the Matter of the Advanced )  
Notice of Proposed Rulemaking: )  
“Mortgage Assets Affected by PACE ) RIN 2590-AA53  
Programs” )

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**JOINT COMMENTS OF  
THE COUNTY OF LOS ANGELES  
&  
THE LOS ANGELES AREA CHAMBER OF COMMERCE**

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President & CEO  
Los Angeles Area Chamber of Commerce  
350 S. Bixel Street  
Los Angeles, CA 90017

March 26, 2012

Pursuant to the Advance Notice of Proposed Rulemaking (“ANPR”), the County of Los Angeles (“County”) and the Los Angeles Area Chamber of Commerce (“Chamber”) respectfully submit these comments on “whether the restrictions and conditions set forth in the July 6, 2010 Statement and the February 28, 2011 Directive should be maintained, changed, or eliminated, and whether other restrictions or conditions should be imposed.”<sup>1</sup>

### **SUMMARY OF POSITION**

The “restrictions and conditions” imposed by FHFA in the Statement and Directive effectively killed the single most promising home energy retrofit program ever devised -- Property Assessed Clean Energy (PACE) -- authorized by approximately 25 states and scores of local governments throughout the country, including the County of Los Angeles.

On May 25, 2010, the County’s Board of Supervisors authorized the issuance of \$100 million in Assessment Bonds to launch the County’s PACE program. Conservative estimates of the benefits of the program include an initial \$150 million in economy activity; 2,600 new jobs; and 20,000 tons of carbon reduced annually.

The Los Angeles Area Chamber of Commerce represents more than 1,600 small, medium, and large businesses with more than 650,000 employees. On September 7, 2011, the Chamber co-hosted with the County “The Business Case for PACE: A Call to Action.” PACE has been one of the Chamber’s highest federal priorities.

As set forth herein, the County and Chamber respectfully submit that the restrictions and conditions imposed by FHFA should be eliminated, and in lieu thereof, FHFA should substitute the lender and consumer protections set forth by the White House, DOE, and the bipartisan legislation, H.R. 2599.

As all of these serious efforts attest -- efforts by state legislatures, local governments, the White House, DOE, and Congress -- rarely has one program provided so many benefits so broadly. PACE simultaneously helps struggling homeowners pay their utility bills and afford their mortgages; increases the underlying real estate collateral value; stimulates local economies; creates real clean energy jobs; reduces energy consumption; helps our environment; and does all this *with* safeguards for mortgage holders and *without* costing the federal government hardly a penny.

Accordingly, the County and Chamber request that the Federal Housing Financing Authority (FHFA) exercise its responsibilities in this proceeding in a manner that simultaneously promotes both the agency’s legitimate objectives *and* the larger public interest so manifestly evident in PACE programs across the country.

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<sup>1</sup> Mortgage Assets Affected by PACE Programs, 77 Fed. Reg. 3958 (proposed Jan. 26, 2012).

It can be done. While the agency repeatedly cites the lack of national standards for PACE programs, there is broad acceptance in the PACE community and by the County and Chamber for *reasonable* national standards. This proceeding provides the perfect opportunity to establish such standards.

However, thus far, the impression created by the agency's actions is that it is not interested in finding common ground on this critically important national issue. Instead, it appears to be "just saying no." However, just saying no does not comport with the fundamental obligation of all federal agencies to exercise their authority reasonably.<sup>2</sup>

It is reasonable for FHFA to insist upon appropriate measures that protect the agency's interest in ensuring that the "first lien" aspect of PACE programs does not pose a "significant soundness and safety" risk to mortgage-related financial interests. It is not reasonable to reject out of hand standards designed to do just that as advanced by the White House, the Department of Energy, and a strong, bipartisan coalition of members of Congress as set forth in H.R. 2599.

The various lender and consumer protections set forth therein substantively address FHFA's appropriate concerns. *DOE's guidelines in particular were promulgated after significant input from members of the financial community who regularly underwrite and structure residential mortgage backed financing.* If adopted by the agency, FHFA's "soundness and safety" concerns should be laid to rest.<sup>3</sup>

At the same time, FHFA should defer to the expertise of others on issues that are beyond its expertise. The Department of Energy is our nation's energy policy standard bearer, and the Department has, without question, understood and championed PACE programs because of its unique efficacy in retrofitting our residential housing stock.

In Los Angeles County, residential energy consumption represents a substantial portion of the county's total energy consumption. The vast majority of these homes were built without energy efficiency standards. Retrofitting our older housing stock, including multi-family units, has always represented the lowest of the low hanging energy efficiency fruit. And yet, notwithstanding the hard work of policy analysts over many, many years, there has never been an approach to residential retrofits that has been effective. Until PACE.

PACE works. And its unique appeal is why so many states and local governments have put in place PACE programs, and why the Department of Energy and

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<sup>2</sup> FHFA's obligation is to "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made" and "whether the decision was based on a consideration of the relevant factors ...." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (citations omitted).

<sup>3</sup> However, to the extent that these standards are not satisfactory to FHFA, then the County of Los Angeles submits that the burden shifts to the agency to explain what economic risk remains, the extent of that risk, and most importantly, bringing the agency's expertise to bear on addressing those risks *without killing the program.*

the White House have been such strong supporters. With the greatest respect, it simply is not FHFA's role, nor does it have the expertise, to independently evaluate PACE's efficacy.

The single inquiry that is arguably within the proper authority of the agency is whether the financial exposure created by the first-lien attribute of PACE assessments does in fact pose a "significant safety and soundness" concern.

The County Treasurer has reached the exact opposite conclusion -- *PACE liens are significantly safer than virtually any and every other public benefit assessment in existence today. The Treasurer reached this conclusion based upon the following considerations: (1) strict eligibility requirements and underwriting criteria; (2) a bond financing structure that includes a Debt Service Reserve that can be used as a source for principal and interest payment in case delinquencies are encountered that further insulates and protects the mortgage holder; and (3) the voluntary nature of the PACE Program.*

There is simply no evidence to support a contrary conclusion unless FHFA really means "any" increase in risk, however theoretical or marginal. And if that is what FHFA means, the County and Chamber submit that its conclusion in this regard is not lawful and will not be upheld.

Indeed, unless it is FHFA's intention to also question the validity of the billions of dollars held by public assessment bondholders that also have first lien status over mortgage holders, FHFA has the heavy burden of explaining why PACE liens should be treated so harshly by the agency. The fact that PACE is new, different, and unique certainly does not justify the agency's actions to date. The fact that does matter is that mortgage holders have far greater assurances under PACE than virtually any other public benefit assessment.

Notwithstanding that fact, and as set forth below in response to the sixteen questions posed by the agency in its ANPR, the County and Chamber support all of the "extra" reasonable protections set forth by the White House, DOE, and H.R. 2599, and urges FHFA to become a constructive player in this process by substituting those additional safeguards for the conditions and restrictions that have effectively killed the single most promising home energy retrofit program ever devised.

### **COUNTY PROGRAM**

On May 25, 2010, the Board of Supervisors of the County of Los Angeles authorized the establishment of the County's PACE program, formally known as the "Los Angeles County Energy Program" (LACEP), and authorized issuance of up to \$100 million of Assessment Bonds to launch the program (Attachment 1). Subsequent to the Board's action, seventy-three cities, including the City of Los Angeles, have passed formal resolutions to join the County's program (Attachment 2).

The County's program was authorized

in accordance with the California Assembly Bill 811 (AB 811, which was approved by the State Legislature and signed by the Governor on July 21, 2008. LACEP is intended to help property owners make capital investments in distributed generation renewable energy sources and energy efficiency and water efficiency improvements (collectively, the Improvements) that will provide long-term efficiencies and reduced energy bills. The Program will provide a financing mechanism for these improvements through an assessment contract between the County and the property owner, pursuant to which the County will disburse a specified amount of funding in the form of loan to the property owner. The property owner will repay this loan through contractual assessments to be included on the annual property tax bill. If the owner sells the subject property prior to full repayment of the loan, the obligation remains a lien on the subject property and transfers to the new property owner. The county intends to finance the Program by issuing (or causing to be issued) bonds payable from the contractual assessment revenues. Participation in the Program is completely voluntary ....<sup>4</sup>

### County Program Benefits

In approving this program, the Board anticipated that the following economic and environmental benefits would flow:

By the end of 2012, LACEP seeks to achieve energy retrofits for 15,000 single-family homes in unincorporated areas of the County, with the potential to add \$150 million to the local economy.<sup>5</sup> LACEP also intends to create an estimated 1,600 home energy retrofit jobs and as many as 1,000 ancillary jobs in fields such as workforce development, local manufacturing, product distribution, and research and development. These improvements to the local economy are in addition to the environmental objectives associated with LACEP and the goal of reducing the county's annual greenhouse gas emissions (attributable to its existing housing stock) by 20,000 tons of carbon dioxide annually. The benefits to both the economy and the environment are expected to increase dramatically once individual cities join LACEP, as the above forecasts were quantified solely for unincorporated areas of the County ....<sup>6</sup>

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<sup>4</sup> Attachment 1, p. 3.

<sup>5</sup> 15,000 homes represents approximately 1% of all single family homes in the County.

<sup>6</sup> *Id.* at pp 3-4. As noted above, since that estimate, 73 cities have in fact joined the County's program, including the City of Los Angeles, significantly increasing the economic and environmental benefits of the program.

## Bond Financing

The Board authorized “an initial issuance of the Assessment Bonds in an aggregate principal amount of not to exceed \$100 million.” According to the Board memorandum,

The final maturity of the Assessment Bonds will be limited to the estimated useful life of the improvements, and on average, is expected to be 15-20 years. The interest rate on the Assessment Bonds will be determined by conditions in the taxable bond market at the time of the sale ... .

The interest rate obtained on the Assessment Bonds will be the single greatest factor in determining the borrowing cost for individual property owners who choose to participate in LACEP. In addition to funding debt service payments on the Assessment Bonds, contractual assessment revenue will also be used to finance a bond reserve fund, pay costs of issuance on the bonds, and fund certain administrative costs of the Program. It is anticipated that participants in LACEP will assume an all-in borrowing cost on their assessments that is approximately 200 basis points (2.0%) higher than the yield on the Assessment Bonds. To the extent that [the] Board takes action to appropriate additional grant funding for the purposes of LACEP, this “spread” of 200 basis points may be narrowed and the borrowing cost to participants reduced below the current estimate of 9.0% to 9.5%. ....

Certain factors that will help to reduce this borrowing cost include ... the development of underwriting criteria that will minimize the risk of loan default. With respect to this [factor], the Treasurer will pursue underwriting criteria, largely dictated by the bond market, to help ensure that only creditworthy individuals are approved for loans under LACEP ....<sup>7</sup>

## Foreclosure Policies

As has been the case with 23 prior issuances of assessment bonds, it is contemplated by the Board of Supervisors that “the County will be required to provide a judicial foreclosure covenant that applies to all delinquent LACEP assessments.” The memorandum explains why:

The ability to initiate foreclosure proceedings in the interest of bondholders has been an integral credit feature for assessment district and community facilities district (Mello-Ross) financings in California for more than two decades. The county has completed twenty-three (23) such financings over this period and has always included a foreclosure covenant in its commitment to bondholders. The ability to sell assessments bonds without a specific foreclosure covenant is highly uncertain in today’s market, and even if feasible, would result in much higher borrowing costs for a program such as LACEP.

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<sup>7</sup> *Id.* at 5-6.

It is therefore expected that the County will retain the right, but not necessarily the obligations, to initiate judicial foreclosure as soon as a property owner becomes delinquent on the annual assessment associated with LACEP (a property tax bill is deemed to be delinquent if any portion of the amount due remains unpaid as of June 30<sup>th</sup>). While the county will have the ability to commence foreclosure proceedings immediately following any delinquency, the requirement to do so will only take effect if there is a corresponding impact to the security provisions of the Assessment Bonds. Specifically, the county will be obligated to pursue judicial foreclosure whenever the reserve fund established for the Assessment bonds (the Reserve Fund) is reduced to a level below its initial funding requirement. ***The Reserve Fund is designed to function as a source of repayment to bondholders in the event that delinquencies prevent assessment revenue from satisfying the principal and interest obligations on the Assessment Bonds*** (emphasis added).

The incorporation of a reserve fund test in the foreclosure covenant is significant in that it can serve to reduce the need to pursue judicial foreclosure proceedings. The Reserve Fund is typically maintained at levels in excess of its initial requirement due to interest earnings that have accumulated during the tax years. These interest earnings can be used to offset any reduction in assessment revenue that might result in a draw on the Reserve Fund. Furthermore, LACEP will have the ability to supplement the Reserve Fund from other funding sources should this be necessary in order to avoid a foreclosure judgment. For example, LACEP could choose to defer certain administrative costs and use these monies as an additional means of meeting the minimum reserve requirement.

***Given the unique structure of AB 811 financings, the Treasurer expects that foreclosures will be significantly less common for LACEP than has been the case in prior assessment districts*** (emphasis added). Unlike other assessment district financings, LACEP is completely voluntary and individual property owners will have to meet a set of minimum credit requirements before being approved for participating in the Program. Furthermore, the County will have some discretion to pursue the larger delinquencies first and not to foreclose on every delinquency that contributes to or precipitates a draw on the Reserve Fund  
.....  
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In sum, the County program was poised to retrofit in the first year 15,000 homes; initially generate \$150 million in economic activity; add 2,600 new jobs; take out 20,000 tons of carbon annually; and help homeowners reduce their utility bills prior to being terminated by the agency. All of this in a program that the County's experts deem to be "significantly" less risky than 23 prior public benefit assessments that have priority over mortgage holders.

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<sup>8</sup> *Id.* at 7-8.

## **Predicate Question**

Prior to responding the questions posed by the agency, the County and Chamber believe that FHFA failed to request comment on arguably the most fundamental question, indeed, the predicate to FHFA's exercise of its authority in this proceeding. That question is:

**Does the nature of the first-lien public benefit assessment for PACE programs pose a materially greater threat to mortgage holders than the first-lien public benefit assessments for other public benefit assessments, including privately-owned improvements such as seismic and fire-related improvements?**

As the Attorney General of California observed,

For well over 100 years, local governments in California have used their assessment powers to finance improvements that serve a public purpose, such as the paving of roads, sidewalk improvements, and the undergrounding of utilities. Under California law, it is well established that in some instances, privately-owned improvements, *e.g.*, seismic and fire-related improvements, can also serve a valid public purpose.<sup>9</sup>

The County of Los Angeles has a long history of utilizing first-lien public benefit assessments.<sup>10</sup> These assessments have been known to FHFA and no action has ever been taken to override the County's authority in this regard. Nor would there have been any basis in law or fact to do so. The incidence of failure to pay property taxes on assessed property is statistically no different than the failure to pay property taxes on property without an assessment. Accordingly, by their practice, Fannie Mae and Freddie Mac have for many years accepted that in California assessments have priority over the mortgage holder and that such assessments are not in violation of the Uniform Securities Instrument (including the California Deed of Trust).

In addition, the White House has properly analogized PACE assessments to the practice of many local governments to create "land-secured" financing districts.<sup>11</sup> These districts are created as a means of repaying local governments through property tax assessments for public infrastructure improvements—such as streets, sidewalks, traffic signals, highway interchanges, and public parking—and other projects that serve a public purpose.

Under this practice, owners of the properties that benefit from the bond-funded infrastructure agree to a lien on their homes (or commercial property) that is paid

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<sup>9</sup> Complaint for Declaratory and Equitable Relief (Unfair Business Practices; Violation of the National Environmental Policy Act) at 2-3, *California ex rel. Brown v. Fed. Hous. Fin. Agency*, No.C10-03084 (N.D. Cal. July 14, 2010) [hereinafter *California ex rel. Brown Complaint*].

<sup>10</sup> Attachment 1 at 8.

<sup>11</sup> White House, *Policy Framework for PACE Financing Programs*, 2 (Oct. 18, 2009), [http://www.whitehouse.gov/assets/documents/PACE\\_Principles.pdf](http://www.whitehouse.gov/assets/documents/PACE_Principles.pdf) [hereinafter White House Policy Framework].

off over time through an annual special tax or assessment. The special tax or assessment revenue is used to pay debt service on the bonds, which are secured further by using the underlying taxed or assessed property as collateral. The special tax or assessment constitutes a senior lien on the property *and is superior to private liens such as construction or mortgage loans*. Unlike mortgage debt, however, the tax or assessment lien is not subject to acceleration. The authorization for these “land-secured” districts is a function of state law...<sup>12</sup>

Given the Statement and Directive’s radical departure from decades of precedent during which public benefit and land-secured financing districts have operated with acceptance by the GSE’s and federal regulators, the County and Chamber submit that FHFA, not local governments, has the burden to justify what about PACE makes it such a significantly greater threat to mortgage holders.<sup>13</sup> To date, FHFA has failed to do so.

The agency has argued that the size and duration of PACE assessments is larger and longer than tax assessments previously accepted. That isn’t true: tax assessments often run twenty to forty years, and the amounts can equal or exceed those of PACE assessments. There are tax assessments in the County today that total over \$20,000. The agency has also stated that PACE “loans represent a key alteration of traditional mortgage lending practice”. That isn’t true either: traditional mortgage lending has always accommodated public benefit assessments. Indeed, one of the benefits of PACE programs is that it builds upon something that the financial community understands, uses, and supports.

In addition, FHFA has said that PACE programs are distinguishable from other traditional property assessments because they are “voluntary.” Yes, in the main, that is true. But what does it prove? There is precedent both in California and nationwide for voluntary benefit assessment districts with regards to septic upgrades and seismic strengthening of homes, and FHFA has never challenged those voluntary programs. Moreover, isn’t it true that non voluntary assessments do not have any of the protections incorporated in the White House, DOE, and congressional standards? Isn’t it also true that non voluntary assessments fall equally upon all households, regardless of their financial situation? And finally, isn’t it also reasonable to conclude that voluntary participants in PACE programs, “self-select” and that the pool itself will likely be more financially qualified, as a whole, than mortgage pools generally?<sup>14</sup>

Finally, and most importantly, the County of Los Angeles Treasurer, whose office has had experience with twenty-three (23) prior issuances of Assessment Bonds, reached a diametrically opposite conclusion. As noted above, and repeated here because of its significance to the heart of this proceeding:

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<sup>12</sup> James M. Van Nostrand, *Legal Issues in Financing Energy Efficiency*, 2 GEO. WASH. J. ENERGY & ENVTL. L. 1, 7 (Winter 2011).

<sup>13</sup> *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

<sup>14</sup> Generally, PACE participants, among other things, have to get a home energy audit, then take the list of cost-effective measures they seek to install to local government, then oversee the installation of the measures. Does FHFA really believe that the universe of homeowners who will undertake all of these efforts are homeowners more likely to end up in foreclosures than homeowners generally?

***Given the unique structure of AB 811 financings, the Treasurer expects that foreclosures will be significantly less common for LACEP than has been the case in prior assessment districts.*** Unlike other assessment district financings, LACEP is completely voluntary and individual property owners will have to meet a set of minimum credit requirements before being approved for participating in the Program.<sup>15</sup>

The combination of stringent credit requirements; a reserve fund; and the voluntary nature of the program makes the County's PACE safe for mortgage holders. Thus, there is a heavy burden on FHFA to support its bare assertion that PACE poses a significantly greater safety and soundness concern than tax assessments generally. That conclusion runs counter to the empirical evidence to date, common sense, and the expertise of the Treasurer of the County of Los Angeles.

**Question 1. "Are conditions and restrictions relating to FHFA-regulated entities' dealings in mortgages on properties participating in PACE programs necessary? If so, what specific conditions and/or restriction may be appropriate?"**

Notwithstanding the County and Chamber's view that FHFA has unjustifiably intruded upon the jurisdiction of state and local governments, the County and Chamber do not object to establishing national standards that would govern "FHFA-regulated entities' dealing in mortgages on properties participating in PACE programs." However, without a doubt, the most important word in the second half of Question 1 is the word "appropriate."

It is neither necessary nor appropriate for FHFA to impose restrictions or conditions that effectively kill PACE. And while it may not be necessary, it is nonetheless appropriate for FHFA to adopt reasonable conditions and restrictions that protect its legitimate interests. The specific underwriting criteria incorporated herein was extensively vetted by the financial community prior to its release by the Department of Energy.

### **White House Framework**

The very highest level of our government – the White House -- has invested considerable time and attention to ensure that the legitimate interests of FHFA are in fact addressed. On October 18, 2009, the White House issued a "proposed policy framework for PACE financing programs" that it developed in concert with "the relevant federal agencies."

As set forth below, the framework proposed two sets of protections, one set for lenders/borrowers and the other set for consumers.

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<sup>15</sup> Attachment 1 at pp. 7-8.

## Lender and Borrower Protections

1. *Assessment Reserve Fund.* A reserve fund should be established at the local-government level, to protect the energy investor against late payment or non-payment of the assessment. This reserve fund means that the value of mortgage lenders' collateral should not be reduced by any failure by the homeowner to pay the PACE assessment.
2. *Length of Time.* The length of time for a homeowner to repay the PACE assessments should not exceed the life expectancy of the energy efficient improvements.
3. *Size of Financing Relative to the House Value.* As a general matter, PACE assessments should not exceed a certain percentage of appraised value of the home, generally 10%.
4. *Clear title.* Applicants must prove they are the legal owners of a property, unanimous approval of property-holders is required, and the title should be clear of easements or subordination agreements that conflict with the assessment.
5. *PACE Financing only where no current default.* Participation in the program should not be allowed unless: (i) property taxes are current; (ii) no outstanding and unsatisfied tax liens are on the property; (iii) there are no notices of default or other evidence of property-based debt delinquency for the lesser of the past three years or the property owner's period of ownership; and (iv) the property is current on all mortgage debt.
6. *No Negative Equity Financing.* PACE loans to borrowers who are "underwater" – whose mortgage and other debt on the property is greater than the current value of the house – raise particular risks because such loans are especially likely to default with less than full payment to private lienholders PACE programs should require a current estimate of appraised value, and outstanding property-based debt cannot be less than the value of the property.
7. *Vulnerable Areas.* Local governments should be cautious in using the PACE model in areas experiencing large home price declines, where large numbers of "underwater" loans may exist. PACE programs in such areas should proceed only after careful attention to local real estate conditions and programmatic safeguards to avoid contributing to additional borrower defaults.
8. *Escrow.* To reduce the risk of non-payment of property assessments, homeowners should escrow payments for PACE programs in the common situations where they already escrow other property tax assessments.

## Homeowner Protection

1. *Savings to Investment Ratio.* As has long been the case for DOE's single-family weatherization program, the "savings to investment ratio" for PACE program assessments should be greater than one. This "pay for itself" principle means that the expected average monthly utility savings to homeowners should be greater than the expected monthly increase in tax assessments due to the PACE energy efficiency or

renewable energy improvements. Improvements should be made where there is a positive net present value, so that expected total utility bill savings are estimated to be greater than expected total costs (principal plus interest). In some instances, tax credits or other subsidies are available to support investments. If so, then the present value of the expected savings to consumers should be greater than the present value of the increase in assessments once those subsidies are included.

2. *Financing Should be for High-Value Investments.* Financing should be limited to investments that have a high return in terms of energy efficiency gains. In some cases, investments can be limited to a set of projects that have well-documented efficiency gains for most houses in a climate zone, such as sealing ducts or installing insulation. In other cases, investments will be based on the results of an authorized energy audit that identifies the energy efficiency gains for a particular house for a particular retrofit. Ensuring that loans are made for these high-value investments will protect homebuyers and mortgage lenders, and maximize the impact of PACE on improving energy efficiency.

3. *Assuring that the Retrofit is Constructed as Intended.* First, the scope of the retrofit should be determined by a list of presumptively-efficient projects or based on an energy audit, conducted by a qualified auditor or inspector. Second, validly licensed contractors or installers should do the actual home improvements. Third, there should be an after-the-fact quality assurance program. Qualified raters should do reviews upon completion, for the portion of houses needed to assure program quality, to assure that correct work was performed and is up to standards. If the property owner or local government administering the contract is not satisfied with a retrofit or if the follow-up rating shows that the work was not completed in a commercially reasonable manner, the contractor should be required to fix the work. If that does not solve the problem, then just as with any construction project, payment to the contractor can be withheld until such a time as the work is done **satisfactorily** or the homeowner can seek other redress. In circumstances where a project is not completed to standards, the contractor should be disqualified from further work under the PACE program – a strong incentive to complete work correctly.

### **DOE Guidelines**

The above White House “framework” was then “implemented” by proposed Department of Energy “guidelines” for PACE on May 7, 2010. As DOE observes, these guidelines:

*are significantly more rigorous than the underwriting standards currently applied to land-secured financing districts.* Especially in light of the exceptionally challenging economic environment and recovering housing market, the following best practice guidelines for pilot PACE financing programs are important to provide *an extra layer of protection to both participants who voluntarily opt into*

*PACE programs, and to lenders who hold mortgages on properties with PACE tax liens.*<sup>16</sup>

Like the White House framework, these DOE guidelines are divided into two sets – one for “program design best practices” and the other “assessment underwriting.”

### DOE Program Design Best Practice Guidelines

#### 1. Expected Savings-to-Investment Ratio (SIR) Greater Than One

The primary rationale for PACE programs is to pursue a legally-defined “public purpose”, which generally includes environmental, health, and energy independence benefits. Although traditional land-secured assessment districts do not require projects to “pay for themselves”, PACE financing should generally be limited to cost effective measures to protect both participants and mortgage holders until PACE program impacts become more widely understood.

The financed package of energy improvements should be designed to pay for itself over the life of the assessment. This program attribute improves the participant’s debt-to-income ratio, increasing the participant’s ability to repay PACE assessments and other debt, such as mortgage payments. Local governments should consider three program design features to ensure that the expected SIR is greater than one:

- An energy audit and modeling of expected savings to identify energy efficiency and renewable energy property improvement measures that are likely to deliver energy and dollar savings in excess of financed costs over the assessment term. Local governments should limit investment to those identified measures.
- In lieu of audits, programs may choose to limit eligibility to those measures with well-documented energy and dollar savings for a given climate zone. There are a number of energy efficiency and renewable energy investments that are most likely to yield a SIR of greater than one for most properties in a region.
- Encourage energy efficiency before renewable energy improvements. The economics of renewable energy investments can be enhanced when packaged with energy efficiency measures. The SIR should be calculated for the entire package of investments, not individual measures.

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<sup>16</sup> Dept. of Energy, *Guidelines for Pilot PACE Financing Programs*, 1 (May 7, 2010), [http://www1.eere.energy.gov/wip/pdfs/arra\\_guidelines\\_for\\_pilot\\_pace\\_programs.pdf](http://www1.eere.energy.gov/wip/pdfs/arra_guidelines_for_pilot_pace_programs.pdf) (emphasis added) [hereinafter DOE Guidelines].

## 2. The Term of the Assessment Should Not Exceed the Useful Life of the Improvements

This best practice guidelines document is intended to ensure that a property owner's ability to repay is enhanced throughout the life of the PACE assessment by the energy savings derived from the improvements. It is important to note that the useful life of the measure often exceeds the assessment term.

## 3. Mortgage Holder of Record Should Receive Notice When PACE Liens Are Placed

Mortgage holders should receive notice when residential property owners fund improvements using a PACE assessment.

## 4. PACE Lien Non-Acceleration Upon Property Owner Default

In states where non-acceleration of the lien is standard for other special assessments, it should also be standard for PACE assessments. After a foreclosure, the successor owners are responsible for future assessment payments. Non-acceleration is an important mortgage holder protection because liability for the assessment in foreclosure is limited to any amount in arrears at the time; the total outstanding assessed amount is not due in full.

## 5. The Assessment Should Be Appropriately Sized

PACE assessments should generally not exceed 10% of a property's estimated value (i.e. a property value-to-lien ratio of 10:1). In addition, because of the administrative requirements of administering PACE programs, assessments should generally not be issued for projects below a minimum cost threshold of approximately \$2500. These measures ensure that improvements are "right-sized" for properties and for the administrative costs of piloting PACE programs. PACE programs may also choose to set the maximum assessment relative to median home values.

## 6. Quality Assurance and Anti-Fraud Measures

Quality assurance and anti-fraud measures are essential protections for property owners, mortgage holders, investors, and local governments. These measures should include:

- Only validly licensed auditors and contractors that adhere to PACE program terms and conditions should be permitted to conduct PACE energy audits and retrofits. Where feasible or necessary, auditors and contractors should have additional certifications appropriate to the installed measures.
- Inspections should be completed on at least a portion of participating properties upon project completion to ensure that contractors participating in the PACE program are adequately performing work.
- If work is not satisfactorily completed, contractor payment should be withheld until remedied. If not satisfactorily remedied, programs should disqualify contractors from further PACE-related work.

- Property owners should sign-off before payment is issued for the work.

## 7. Rebates and Tax Credits

The total amount of PACE financing should be net of any expected direct cash rebates for the energy efficiency or renewable energy improvements chosen. However, other non-direct cash incentives can be more difficult to manage. For example, calculating an expected income tax credit can be complicated, as not all participants will have access to the tax credit and there will be time lags between project completion and tax credit monetization. Programs should therefore consider alternative structures for financing this gap, including assignment of rebates and tax credits to repay PACE assessments, short-term assessment additions, and partnering with third party lenders that offer short-term bridge financing. At the minimum, programs should provide full disclosure to participants on the implications and options available for monetizing an income tax credit.

## 8. Participant Education

PACE may be an unfamiliar financing mechanism to program participants. As such, it is essential that programs educate potential participants on how the PACE model works, whether it is a property owner's most appropriate financing mechanism, and the opportunities and risks PACE program participation creates for property owners. Programs should clearly explain and provide disclosures of the following:

- How PACE financing works
- Basic information on other financing options available to property owners for financing energy efficiency and renewable energy investments, and how PACE compares
- All program fees and how participants will pay for them
- Effective interest rate including all program fees, consistent with the Good Faith Estimate (GFE) of the Real Estate Settlement Procedure Act (RESPA) and the early and final disclosure of the Truth in Lending Act (TILA).
- PACE assessment impact on escrow payments (if applicable)
- Risk that assessment default may trigger foreclosure and property loss
- Information on transferring the assessment at time of sale
- Options for and implications of including tax credits in the financed amount

## 9. Debt Service Reserve Fund

For those PACE programs that seek third party investors, including investors in a municipal bond to fund the program, an assessment reserve fund should be created to protect investors from late payment or non-payment of PACE assessments.

## 10. Data Collection

Pilot programs should collect the data necessary to evaluate the efficacy of PACE programs. Examples of typically collected data would include: installed measures, investment amount, default and foreclosure data, expected savings, and actual energy use before and after measures installation. To the extent possible, it's important that programs have access to participant utility bills, ideally for 18 months before and after the improvements are made. The Department of Energy will provide more detailed information on collecting this data, obtaining permission to access utility bills, and how to report program information to enable a national PACE performance evaluation.

### DOE Assessment Underwriting Best Practices Guidelines

Local governments should design underwriting criteria to reduce the risk of default and impairment to the property's mortgage holders. Many best practices for reducing these risks are included in the previous section. In addition, underwriting criteria for individual assessments should include the following:

#### 1. Property Ownership

- \* Check that applicant has clear title to property and that the property is located in the financing district.
- \* Check the property title for restrictions such as details about power of attorney, easements, or subordination agreements.

#### 2. Property-Based Debt and Property Valuation

- \* Estimated property value should be in excess of property owner's public and private debt on the property, including mortgages, home equity lines of credit (HELOCs), and the addition of the PACE assessment, to ensure that property owners have sufficient equity to support the PACE assessment. Local governments should be cautious about piloting the PACE model in areas with large numbers of "underwater" mortgages.

- \* To avoid placing an additional tax lien on properties that are in distress, have recently been in distress, or are at risk for distress, the following should be verified:

- o There are no outstanding taxes or involuntary liens on the property in excess of \$1000 (i.e. liens placed on property for failure of the owner to comply with a payment obligation).

- \* Property is not in foreclosure and there have been no recent mortgage or other property-related debt defaults.

- \* Programs should attain estimated property value by reviewing assessed value. This is typically used in assessment districts. If assessed value appears low or high, programs should review comparable market data to determine the most appropriate valuation. If programs believe the estimated value remains inaccurate or there is a lack

sufficient comparable market data to conduct an analysis, they should conduct a desktop appraisal.

### 3. Property Owner Ability to Pay

PACE programs attach the obligation to repay the cost of improvements to the property (not to the individual borrower). The standard underwriting for other special assessments only consists of examining assessed value to public debt, the total tax rate, and the property tax delinquency rate. However, we deem certain precautions important due to the current vulnerability of mortgage lenders and of the housing market in many regions. These precautions include:

- A Savings-to-Investment Ratio (SIR) greater than one, as described above, to maintain or improve the property owner's debt-to-income ratio.
- Property owner is current on property taxes and has not been late more than once in the past 3 years, or since the purchase of the house if less than three years
- Property owner has not filed for or declared bankruptcy for 7 years.

#### **H.R. 2599**

In the aftermath of the agency's Statement and Directive, a bipartisan group of fifty-two members of the House of Representatives have sponsored H.R. 2599. The members supporting this legislation span the political spectrum from tea party Republicans to liberal Democrats. The legislation would effectively negate FHFA's decision to kill PACE and in its place substitutes the best practices recommended by DOE. And, in one important respect, goes even further.

Under the bill, no property that is close to underwater is eligible. Only properties that have at least 15% positive equity would qualify. This factor alone is estimated to eliminate almost 1/3 of all residential properties. Under that standard, a standard the County and the Chamber supports, PACE assessments would be clearly safer than either other tax assessments or mortgages generally.

**Conclusion to Question 1: The White House framework, DOE guidelines, and provisions of H.R. 2599 collectively provide reasonable "extra" protection to mortgage related interests and should be adopted by FHFA in lieu of the existing unreasonable restrictions and conditions that effectively killed PACE programs nationwide.**

**Question 2: How does the lien-priming feature of first-lien PACE obligations affect the financial risks borne by holders of mortgages affected by PACE obligations or investors in mortgage-backed securities based on such mortgages?**

The County and Chamber submit that “the lien-priming feature of first-lien PACE obligations” *decrease* “the financial risks borne by holders of mortgages affected by PACE obligation.” That conclusion is supported by the experience to date of PACE assessments, common sense, and the expert views of the Los Angeles County Treasurer.

Broadly speaking, the issue of first lien is itself somewhat a red herring. What matters to the mortgage holder is whether they are going to be on the hook for any delinquent PACE loans. Banks do not want to be bond insurers. Understood. That is what the Reserve Fund is for. The Reserve Fund is the front line protection measure for the lender; the lender is not out of pocket in the event of foreclosure. Traditional debt service reserve funds only benefit investors. These reserve funds are meant to protect the first mortgage lender; to draw upon the reserve fund for delinquent tax assessments in order to forestall foreclosures.

More narrowly, the fact is that the odds of a home going into foreclosure with a PACE assessment is significantly lower than homes without them. There have been approximately 2,500 homes subject to PACE assessments, and of those, there have been only 2 reported defaults, or a total default rate of 0.1 percent.<sup>17</sup> That is 1/30th of the 3.2 percent average for defaults on non-PACE homes in the same communities in which the PACE assessments were issued.

This preliminary evidence is consistent with common sense – PACE puts money back in homeowner’s pockets, making it easier for the homeowner to meet its mortgage obligation. The County and Chamber challenge FHFA to identify any other public benefit tax assessment with similar first-lien priority that actually creates a positive cash flow for the homeowner. Rather than fighting PACE, FHFA would be doing its constituency a service by embracing it.

What exactly is the “financial risk” that FHFA deems to be so “significant?” One reasonable methodology to quantify that risk is set forth by PACENow.<sup>18</sup> The methodology assumes non acceleration clauses, as suggested by the White House, DOE, H.R. 2599, and many local programs. That means that the mortgage holders only exposure is the back tax lien payment. That is the only amount satisfied before the mortgage note. The rest of the balance is reinstated post bankruptcy. In that context, PACENow calculates the exposure in the following manner for residential homes:

Assume you have a \$300,000 home, \$250,000 mortgage and \$20,000 (6% interest rate) 20 year PACE loan that is paid off \$1,700 per year for 20 years. If the house is foreclosed on with 1 year of PACE payments in arrears, then the 1year of back payment - or \$1,700 – is paid ahead of the mortgage, not the full \$20,000. So in this example, the mortgage has \$1,700 paid ahead of it (less than 1% of the value of the mortgage). Far fewer than 10% of homes will result in foreclosure (10% is where the subprime crisis peaked). For conservatism, assume

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<sup>17</sup> PACENow, <http://www.pacenow.org>.....

<sup>18</sup> PACENow, *PACE Program Information: Response to Regulatory Agency Questions*, [http://pacenow.org/documents/Legal\\_Finance\\_Q&A.pdf](http://pacenow.org/documents/Legal_Finance_Q&A.pdf).

10% of all PACE homes in the above scenario result in foreclosure. This suggests that with a "portfolio" of Fannie/Freddie mortgages that have PACE liens, the impact is 10% x \$1,700 or \$170 (yes, one hundred and seventy dollars per home on average). Realistically, probably less than 5% of homes would result in foreclosure, which results in an average \$85 of seniority in foreclosure on the hypothetical portfolio of Fannie/Freddie mortgages.<sup>19</sup>

Is FHFA seriously contending that “an average \$85 of seniority in foreclosure” – which the data to date suggests is itself an overly conservative estimate -- poses a “significant safety and soundness” risk? – *even where local governments establish appropriate reserves to address it?* If FHFA doesn’t accept this methodology, the agency has an obligation to explain why and propound its own. To date, FHFA has not done that, and its concerns appear totally hypothetical and not grounded in reasoned economic analysis.

**Conclusion to Question 2: The first-lien feature of PACE assessments does not pose any significant risk to mortgage holders.**

**Question 3: How does the lien-priming feature of first-lien PACE obligations affect any financial risk that is borne by holders of mortgages affected by PACE obligations or investors in mortgage-backed securities based on such mortgages and that relates to any of the following:**

- **The total amount of debt secured by the subject property relative to the value of the subject property (i.e., Combined Loan to Value Ratio for the property or other measures of leverage);**
- **The amount of funds available to pay for energy-related home-improvement projects after the subtraction of administrative fees or any other program expenses charged or deducted before funds become available to pay for an actual PACE-funded project (FHFA understands such fees and expenses can consume up to 10% or more of the funds a borrower could be obligated to repay under some PACE programs);**
- **The timing and nature of advancements in energy-efficiency technology;**
- **The timing and nature of changes in potential homebuyers’ preferences regarding particular kinds of energy-efficiency projects;**

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<sup>19</sup> PACENow, *PACE Programs: Historical Precedent, Seniority and Benefits to Existing Lenders*, <http://pacenow.org/documents/PACE%20Mortgage%20Seniority%20Memo%202.4.10.pdf>

- **The timing, direction and magnitude of changes in energy prices; and**
- **The timing, direction, and magnitude of changes of property values, including the possibility of downward adjustments in value?**

The County and Chamber, as set forth in response to Question 2, do not accept the premise that the first-lien aspect of PACE assessments – consistent with public benefit assessments generally – poses any greater risk to mortgage holders. Indeed, the premise and structure of PACE is that it will assist homeowners in reducing their total cash outlays due to lower energy bills, thereby increasing their capacity to fulfill their mortgage obligation. The requirement for a savings to investment ratio of 1 virtually ensures that result.

However, in an attempt to satisfy the concerns of FHFA, the White House, DOE, H.R. 2599 and local programs like the County’s all embrace the notion that the total amount of the assessment to be repaid can not exceed 10% of the value of the subject property. FHFA should adopt this criteria as part of the national standard promulgated herein. Moreover, the improvements made by the loan will result in an increase in the value of the real estate collateral – thereby improving the combined loan to value ratio for the property.

FHFA also questions the level of administrative costs associated with the program. Local governments have every interest in keeping the cost of administration down so that the total package meets the SIR (Savings to Investment Ratio) of 1.

Insofar as the County’s program did not get off the ground due to FHFA’s actions, the County only has estimates of administrative costs. In a memorandum to the County’s Treasurer shortly before the Board’s adoption of its PACE program, the County was advised as follows:

It is assumed that the County program’s administration and staff time will cost \$350,000 per year, subject to 2% annual inflation. These costs will be fully covered by the spread between the bond rate and the effective rate charged to participants. Other on-going costs such as marketing and application processing are included in the \$460 of start-up.<sup>20</sup>

The projected program costs are spelled in that memorandum, which is attached for the agency’s review.<sup>21</sup>

With due respect, FHFA should not even consider issues such as “the timing and nature of advancements in energy-efficiency technology” or the “timing, direction, and magnitude of changes in energy prices.” These are issues that are properly the domain of

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<sup>20</sup> Attachment 3, p. 2.

<sup>21</sup> *Id.*

the Department of Energy and state agencies such as the California Energy Commission and local governments who run energy efficiency programs.<sup>22</sup>

In the County, the residential customers of Los Angeles Department of Water & Power are facing estimated electricity rate increases of 20% over the 2012 to 2022 time frame.<sup>23</sup> The County believes that it is a legitimate public benefit to help our residents reduce their utility bills, energy consumption, and environmental footprint. And there is nothing in the energy forecasts or projected climate change dynamic that is inconsistent with our firm commitment to this program.

Is FHFA going to independently assess whether PACE programs are cost-effective at the projected path of future electricity prices across the county? Or become the energy efficiency technology guru that concludes that the “pace” of energy efficiency technology advancements is such that it somehow undermines the effectiveness of PACE programs and that PACE improvements could become a drag in a future housing market?

That is why, among other things, there is an energy audit from a certified professional that identifies only the most cost-effective measures. This energy audit will address the priority for particular kinds of energy efficiency projects that is most optimal from a financial cost-benefit standpoint, taking into consideration the possibility of changes in energy prices over time.

The lead federal agency on these issues, DOE, has made its views about PACE perfectly clear. DOE offered tens of millions of dollars to local governments, including the County, in support of PACE programs before FHFA killed them. As reflected in the Guidelines it developed, DOE also worked hard to try to satisfy this agency – as has the rest of the PACE community. For the agency to now also second guess whether the practically universal support for PACE among energy efficiency professionals inside and outside government is truly warranted is really too much.

**Conclusion to Question 3: FHFA should assume PACE is truly a public benefit program that meets the most rigorous cost benefit analysis; that local governments will not burden the program with excess administrative overhead; and that PACE improvements will not be made obsolete or counterproductive based on either changes in technology or reasonable estimates of energy prices.**

**Question 4: See response to Question 3. As set forth therein, there are numerous risk mitigation measures required under the various protections suggested by DOE,**

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<sup>22</sup> The EIA’s September 2011 International Energy Outlook projects that oil prices reach \$108 per barrel in 2020 and \$125 per barrel in 2035. U.S. Energy Information Administration, *International Energy Outlook 2011*, 1, Report No. DOE/EIA 0484 (2011), [http://www.eia.gov/forecasts/ieo/pdf/0484\(2011\).pdf](http://www.eia.gov/forecasts/ieo/pdf/0484(2011).pdf).

<sup>23</sup> California Energy Commission, *Preliminary California Energy Demand Forecast 2012-2022*, CEC-200-2011-011-SD, August, 2011, <http://www.energy.ca.gov/2011publications/CEC-200-2011-011/CEC-200-2011-011-SD.pdf>.

the White House, and HR 2599, such as reserve funds, savings to investment ratios greater than 1, minimum loan to value tests, and minimum equity requirements.

**Question 5: What alternatives to first-lien PACE loans (e.g. self-financing, bank financing, leasing, contractor financing, utility company “on-bill” financing, grants, and other government benefits) are available for financing home-improvement projects relating to energy efficiency? On what terms? Which do and which do not share the lien-priming features of first lien PACE obligations? What are the relative advantages and disadvantages of each, from the perspective of (i) the current and any future homeowner–borrower, (ii) the holder of an interest in any mortgage on the subject property, and (iii) the environment.**

If by asking this question, FHFA is signaling its willingness to honestly weigh the projected costs and unique benefits of PACE, then the County and Chamber welcome the inquiry. Given the clearly insignificant financial risk in play, and the overwhelming public benefits, the agency would then be guided to allow PACE to go forward with the protections set forth in response to Question 1.

For there is a reason why the energy efficiency world is united behind PACE – it does what no alternative program has ever come close to doing. The County, along with the White House, DOE, state legislatures, local governments, and energy efficiency and renewable energy advocates from across the country have assessed all of the other options. None of them have the potential that PACE has to transform – literally transform – the realm of residential energy retrofits.

The County explored alternative financing models, including utility on bill financing as well as second lien energy efficiency loans. Our conclusion was that the PACE model offers the most attractive cost to the homeowners and solves the most significant hurdles facing traditional energy efficiency loan products. All of the other alternatives are both more expensive and lack capital. As FHFA certainly appreciates, since 2008, the market for second lien financing has significantly dried up. Moreover, existing utility on bill financing programs in California are available only to commercial parties.

The PACE program is the only viable, cost-effective financing mechanism for property owners to secure energy efficiency solutions for their home. *It is cost effective, scalable, and proven. No other program has those attributes.* The investment community has over 100 years of history with this type of financing. It is a proven model for achieving a wide range of public benefits. It is the program energy efficiency experts have been waiting for.

The White House describes “the Promise of Pace Financing” in this way:

By making energy efficiency investments easier, less expensive, and more effective, PACE can help to increase the amount invested in energy efficiency. Specifically, PACE programs streamline financing of energy efficiency

investments in three key ways. First, property assessments provide a secure, well-established payback mechanism that will lead to lower borrowing costs. The security of the payback mechanism often makes it possible for PACE financing to be offered with no money down requirement. Second, the economies of scale from making PACE financing available to a large group of borrowers can reduce overhead and transaction costs. Finally, effective administration of PACE programs at the local-government level will create more consumer confidence in the economic value of energy efficiency investments.<sup>24</sup>

It is in fact the unique first-lien attribute of PACE assessments that make the program work: it produces the lowest cost program that results in the greatest amount of energy efficiency gains. The attribute of transferability – that the obligation moves to the new homeowner if sold – makes “deeper” retrofits possible. Historically, other financing models only achieve limited retrofits that pay for themselves in one to three years. With transferability, the homeowner now longer focuses on that short term horizon and immediate payback, but is more prepared to invest in more significant projects that have a substantially greater impact on reducing energy consumption and utility bills.

The current and future homeowner get a significant advantage – a reduction in the second most expensive aspect of home ownership, utility bills, a reduction greater than the annual cost of the assessment. The holder of the mortgage gets the benefits of a more financially secure homeowner; far greater protections than traditional public benefit assessments with similar first-lien priority; and an increase in the value of the property. And our environment is improved because we are finally effectively attacking what is approximately one-third of our electricity consumption and its associated greenhouse gas emissions.

In the real world, all stakeholders actually win with PACE. It is only in some hypothetical world where lines are drawn in the sand that *any* significant financial risk exists.

**Conclusion on Question 5: The first-lien quality of PACE assessments is what makes PACE the break-through in the home energy retrofit realm. PACE benefits all stakeholders, including the mortgage holders, with less risk than public benefit assessments generally.**

**Question 6: How does the effect on the value of the underlying property of an energy-related home-improvement project financed through a first-lien PACE program compare to the effect on the environment that would flow from the same project if financed in any other manner?**

The County and Chamber acknowledge that if the same project is financed in an alternative manner, the environment doesn't care whether it is with a priority lien or otherwise. However, the point is that the same project will not be financed in an

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<sup>24</sup> White House Policy Framework at 1.

alternative manner. PACE assessments make improvements such as installation of new HVAC units possible, a critical aspect of home energy consumption. The breadth and depth of improvements that are cost effective with PACE is precisely why PACE is so critical to the environment.

**Conclusion to Question 6: The environment is neutral to the means of accomplishing retrofits of our residential housing stock -- but only PACE has the means.**

**Question 7: How does the effect on the environment of an energy-related home-improvement project financed through a first-lien PACE program compare to the effect on the environment that would flow from the same project if financed in any other manner?**

*See response to Question 6.*

**Question 8: Do first-lien PACE programs cause the completion of energy-related home improvements projects that would not otherwise have been completed, as opposed to changing the method of financing for projects that would have been completed anyway? What, if any, objective evidence exists on this point?**

The County and Chamber submit, as set forth in response to Question 6, the answer is yes, both in theory and in practice. By reducing the cost of retrofits, the universe of measures that become cost-effective grows. That is the theory. In reality, the evidence that does exist, a sample made small by FHFA's precipitous actions, supports this common sense result. In the jurisdictions that have gone forward with PACE, the average assessment with homes that included renewables was \$20,000. Historically, homeowners have been reluctant to invest in projects with more than a one year payback. That is precisely the dynamic that PACE overcomes.

As noted previously, since the PACE assessment travels to the next owner, home owners are more incentivized to invest in deeper retrofits. No longer is the investment limited to just how long the homeowner plans on staying in the home.

**Conclusion to Question 8: PACE makes more happen. Period.**

**Question 9: What consumer protections and disclosures do first-lien PACE programs mandate for participating homeowners? When and how were those protections put into place? How, if at all, do the consumer protections and disclosures that local first-lien PACE programs provide to participating homeowners differ from the consumer protections and disclosures that non-PACE providers of home-improvement financing provide to borrowers? What consumer protection enforcement mechanisms do first-lien PACE programs have?**

The County is proud of its long history of protecting consumers. Consistent with the County's commitment to protecting consumers, it has always been envisioned that

there would be a strong campaign to educate “homeowner-borrowers” on all salient aspects of the program.

However, the County and Chamber submit that more relevant than the County’s own commitment, or the commitment of other local governments in this regard, is the fact that FHFA has the authority to condition acceptance of a PACE program upon the various consumer protections mechanisms spelled out by the White House, DOE, and H.R. 2599. The County and Chamber support these measures.

For example, the DOE guidelines explicitly call for consumer education:

[I]t is essential that programs educate potential participants on how the PACE model works, whether it is a property owner’s most appropriate financing mechanism, and the opportunities and risks PACE program participation creates for property owners. Programs should clearly explain and provide disclosures of the following:

- How PACE financing works
- Basic information on other financing options available to property owners for financing energy efficiency and renewable energy investments, and how PACE compares
- All program fees and how participants will pay for them
- Effective interest rate including all program fees, consistent with the Good Faith Estimate (GFE) of the Real Estate Settlement Procedure Act (RESPA) and the early and final disclosure of the Truth in Lending Act (TILA).
- PACE assessment impact on escrow payments (if applicable)
- Risk that assessment default may trigger foreclosure and property loss
- Information on transferring the assessment at time of sale
- Options for and implications of including tax credits in the financed amount<sup>25</sup>

Similarly, Sec. 5(b)(2) of H.R. 2599 also seeks to ensure that there are sufficient “consumer protections” so that PACE participants know exactly what they need to know:

The local government shall disclose to the participating property owner the costs and risks associated with participating in the PACE program, including risks related to their failure to pay PACE assessments and the risk of enforcement of PACE liens. The local government shall disclose to the property owner the effective interest rate of the PACE assessment, including all program fees. The local government shall clearly and conspicuously provide the property owner the

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<sup>25</sup> DOE Guidelines at 4-5.

right to rescind his or her decision to enter into a PACE assessment, within 3 days of the original transaction.<sup>26</sup>

**CONCLUSION TO QUESTION 9: The County fully intends to have strong consumer protections elements in its program, and the County and Chamber recommend that FHFA adopt the consumer protection measures as set forth by the White House, DOE, and H.R. 2599.**

**Questions 10-13: See answer to Question 9.**

**Question 14: How do the credit underwriting standards and processes of PACE programs compare to that of other providers of Home-Improvement financing, such as banks? Do they consider, for example: (i) Borrower credit worthiness, including an assessment of total indebtedness in relation to the borrower income, consistent with national standards; (ii) total loan-to-value ratio of all secured loans on the property combined, consistent with national standards; (iii) appraisals of property value, consistent with national standards?**

With the greatest respect, in question 14(i), FHFA appears to be trying to fit a square peg in a round hole. PACE is an asset based or collateral based lending program. In that context, the adequacy of the underwriting criteria should be measured by the amount of leverage appropriate given the value of the property. As proposed herein, mortgage holders would be protected by a maximum 10% loan to value ratio and a requirement for at least 15% equity. Given these protections the borrower's creditworthiness should not be a factor. The DOE and HR 2599 guidelines certainly adequately address (ii) and (iii).

**Question 15: What factors do first-lien PACE programs consider in determining whether to provide PACE financing to a particular homeowner-borrower seeking funding for a particular project eligible for PACE financing? What analytic tools presently exist to make that determination? How, if at all, have the methodologies, metrics, and assumptions incorporated into such tools been tested and verified?**

The County and Chamber support the DOE guidelines which ensure that there is a savings to investment ratio greater than one. As set forth therein:

The financed package of energy improvements should be designed to pay for itself over the life of the assessment. This program attribute improves the participant's debt-to-income ratio, increasing the participant's ability to repay PACE assessments and other debt, such as mortgage payments. Local governments should consider three program design features to ensure that the expected SIR is greater than one:

- An energy audit and modeling of expected savings to identify energy efficiency and renewable energy property improvement measures that are likely to deliver energy and dollar savings in excess of financed

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<sup>26</sup> H.R. 2599, 9, 112th Cong. (2011).

costs over the assessment term. Local governments should limit investment to those identified measures.

- In lieu of audits, programs may choose to limit eligibility to those measures with well-documented energy and dollar savings for a given climate zone. There are a number of energy efficiency and renewable energy investments that are most likely to yield a SIR of greater than one for most properties in a region.
- Encourage energy efficiency before renewable energy improvements. The economics of renewable energy investments can be enhanced when packaged with energy efficiency measures. The SIR should be calculated for the entire package of investments, not individual measures.<sup>27</sup>

**Question 16: What factors and information do first-lien PACE programs gather and consider in determining whether a homeowner-borrower will have sufficient income or cash flow to service the PACE obligation in addition to the homeowner-borrower's pre-existing financial obligation? What analytic tools presently exist to make that determination? How, if at all, have the methodologies, metrics, and assumptions incorporated into such tools been tested and validated?**

The goal of the PACE program is to minimize any negative impact on a homeowner-borrower's cash flow – indeed, it can increase that cash flow by reducing utility bills by more than the cost of the annual assessment. That is what a SIR of 1 should produce. As noted previously, insofar as this is an asset based transaction, an analysis of the homeowner-borrowers cash flow is not pertinent. Moreover, insofar as the mortgage holder is concerned, it is the Reserve Fund that protects its interests combined with the other safeguards in the White House, DOE and HR 2599 provisions.

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<sup>27</sup> DOE Guidelines at 2-3.

## **CONCLUSION**

For the reasons stated herein, the County of Los Angeles and the Los Angeles Area Chamber of Commerce respectfully requests that FHFA substitute the PACE protective measures set forth in the White House framework, the DOE guidelines, and HR 2599 for the restrictive conditions currently in place that effectively killed the most promising home energy retrofit program ever devised.

Respectfully submitted

/s/

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On behalf of  
**THE COUNTY OF LOS ANGELES**  
&  
**THE LOS ANGELES AREA CHAMBER OF COMMERCE**

March 26, 2012

Attachments

