



PROGRAM ADMINISTRATOR AGREEMENT

THIS AGREEMENT is entered into this 21st day of August, 2013 (the "Effective Date") between the Town of Randolph, a municipality in the State of Vermont (hereinafter "Municipality"), and VERMONT ENERGY INVESTMENT CORPORATION d/b/a EFFICIENCY VERMONT, a non-profit corporation doing business at 128 Lakeside Avenue, Suite 401, Burlington, Vermont 05401 (hereinafter "VEIC" or "Program Administrator").

WITNESSETH

WHEREAS, Municipality has created a Property-Assessed Clean Energy ("PACE") District and has established or is considering establishing a PACE Program ("Program") to assist property owners within Municipality with the acquisition, construction, or installation of certain eligible energy efficient improvements and renewable energy systems ("Eligible Projects") pursuant to Title 24, Chapter 87 of Vermont Statutes Annotated, as amended (the "Act"); and

WHEREAS, Program Administrator is an entity appointed under 30 V.S.A. §209 (d)(2) to deliver energy efficiency programs in the State of Vermont and, as such, has certain obligations under the Act, including providing information to municipalities concerning the implementation of the Act; and

WHEREAS, Municipality desires to retain the services of Program Administrator as set forth herein to assist with Municipality's implementation of its PACE Program.

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) SCOPE OF SERVICES

Program Administrator agrees to oversee the performance of all services described in Exhibit A, in accordance with its stated terms and conditions. In order to provide effective and efficient underwriting, closing and servicing of the PACE Assessments, Program Administrator expects to contract with a financial institution that will serve the role of PACE Processor. Exhibit A is attached to and made a part of this Agreement.

2) OBLIGATIONS OF MUNICIPALITY

- a) For each application submitted for participation in the Program, Municipality shall review and ensure:
 - i) the accuracy of the property description;
 - ii) the identity of the legal owner(s):

- iii) That property tax payments are current and there have been no delinquencies by the property owner in the previous three years; and
 - iv) The property has no involuntary liens at the time of application or closing of the PACE Assessment .
- b) In the event a participating property owner fails to pay the assessment due, Municipality shall undertake and prosecute such remedial actions (including foreclosure) as may be necessary for collection of the assessment and any associated interest and penalties, and as may further be necessary for the PACE Program Administrator to certify a balance due deficiency for payment out of the PACE Reserve Fund or the State PACE Reserve Fund.

3) **PAYMENT**

For services referred to in Section 1, Program Administrator shall be compensated as follows:

- a) a non-refundable application fee, in an amount set by Program Administrator up to a maximum of \$350, to be paid to Program Administrator by each property owner in Municipality that has applied for participation in the Program;
- b) an annual administration fee, in an amount set by Program Administrator up to a maximum of \$50 per year, to be paid to Program Administrator by each property owner in Municipality who is participating in the Program; and
- c) a servicing fee in an amount set by Program Administrator up to a maximum of 1% (annualized) of the outstanding principal, to cover the administrative costs incurred by the Program Administrator and/or the PACE Program Processor. Said fee shall be added to the interest rate charged by any credit facility obtained by the Program Administrator and earned as each payment is made.
- d) Late fees charged in excess of the regular assessment payment shall be paid to the Program Administrator. Penalties charged to delinquent payers shall accrue to Municipality.
- e) Program participants may be charged additional fees to cover the cost of recording documents, changes in documents due to an increase in the assessment amount after closing, receiving payoff statements, transferring ownership or other direct costs related to the administration of the program.

4) **TERM**

- a) This Agreement shall commence on the Effective Date. It shall continue until all PACE assessments financed in the community as a result of this agreement have been fully repaid or the town has been noticed that they have gone into default.
- b) Either party may terminate this Agreement for any reason upon ninety (90) days' written notice to the other party.
- c) Except as provided in this Agreement, in no event shall Municipality be liable for costs incurred by or on behalf of Program Administrator after the effective date of a notice of termination.

Municipality understands that it will be obligated to otherwise perform the obligations of the Program Administrator herein upon termination of this Agreement.

- d) The municipality may choose to prohibit any new participants in the PACE District with ninety (90) days' written notice sent to VEIC.
- e) A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this Agreement and deposits with the U.S. Postal Service, first class mail, postage prepaid. For purposes of this Agreement, all notices to Municipality shall be addressed as follows:

Municipality: Town of Randolph

Street: PO Drawer B, 7 Summer Street

City, State, and Zip Code: Randolph, Vermont 05060

ATTN: Town Manager

For purposes of this Agreement, all notices to Program Administrator shall be addressed as follows:

Vermont Energy Investment Corporation
128 Lakeside Avenue, Suite 401
Burlington, Vermont 05401
ATTN: PACE Administrator

5) INSURANCE

- a) Program Administrator shall maintain at all times during the performance of this Agreement a commercial general liability insurance policy with a minimum occurrence coverage in the amount of \$1,000,000 (one million dollars), and an automobile liability insurance policy in the minimum amount of \$500,000 (five hundred thousand dollars). All insurance policies shall be evidenced by the original Certificate of Insurance, specifying the required coverage.
- b) If the commercial general liability insurance referred to above is written on a Claims Made Form then, following termination of the Agreement, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this Agreement.
- c) If Program Administrator employs any person, it shall carry workers' compensation and employer's liability insurance.

6) CONFORMITY WITH LAW AND SAFETY

Program Administrator shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies having jurisdiction over any or all of the scope of services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all Vermont Occupational Safety and Health Regulations, and all other applicable federal, state, municipal and local safety regulations. All services performed by Program Administrator must be in accordance with these laws, ordinances,



codes and regulations. Program Administrator shall release, defend, indemnify and hold harmless Municipality, its officers, agents, volunteers and employees from any and all damages, liability, fines penalties and consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

7) **AUDIT**

Municipality may conduct an audit of Program Administrator's financial, performance and compliance records maintained in connection with the operations and services performed under this Agreement. In the event of such audit, Program Administrator agrees to provide Municipality with reasonable access to Program Administrator's employees and make all such financial, performance and compliance records available to Municipality. Municipality agrees to provide Program Administrator an opportunity to discuss and respond to any findings before a final audit report is filed.

8) **SETOFF AGAINST DEBTS**

Program Administrator agrees that Municipality may deduct from any payments due to Program Administrator under this Agreement any monies that Program Administrator owes Municipality under any ordinance, Agreement or resolution for any unpaid taxes, fees, licenses, unpaid checks or other amounts.

9) **REPORTING**

Program Administrator shall provide Municipality with reports of program participants, assessment amounts, repayments and delinquencies no less than annually.

10) **CONFIDENTIALITY OF INFORMATION**

Program Administrator understands and agrees that, in the performance of the services under this Agreement or in the contemplation thereof, Program Administrator may have access to private or confidential information that may be owned or controlled by Municipality or participating property owners and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Municipality or participants. Program Administrator agrees that all information disclosed by Municipality to Program Administrator shall be held in confidence and used only in performance of the Agreement. Program Administrator shall exercise the same standard of care to protect such information as a reasonably prudent consultant would use to protect its own proprietary data.

Program Administrator shall ensure that all PACE application materials remain confidential.

The foregoing provisions shall not apply to any information that: (a) is or becomes publicly known through no wrongful act by Program Administrator or its designee; (b) is independently developed by Program Administrator without breach of this agreement; (c) is explicitly approved for public release by prior written authorization of Municipality or PACE participant; or (d) is required to be disclosed by law or requested by a governmental body or agency, or is sought by judicial process, provided, however, that whenever such disclosure is so required, Program Administrator shall use

its best and reasonable efforts to assure that such disclosure is limited and subject to a protective order or similar safeguard.

11) GOVERNING LAW

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of Vermont. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in Burlington, Vermont.

12) AMENDMENTS

The terms and conditions of this Agreement shall not be altered or otherwise modified except by written amendment to this Agreement executed by Municipality and Program Administrator.

13) ENTIRE AGREEMENT

- a) The terms and conditions of this Agreement, all exhibits attached and any documents expressly incorporated by reference represent the entire Agreement between the parties with respect to the subject matter of this Agreement. This Agreement shall supersede any and all prior Agreements, oral or written, regarding the subject matter between Municipality and Program Administrator. No other Agreement, statement, or promise relating to the subject matter of this Agreement shall be valid or binding except by a written amendment to this Agreement.
- b) If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.

14) SEVERABILITY

If any part of this Agreement or the application thereof is declared invalid for any reason, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

15) WAIVER

Failure of either party to insist on strict performance shall not constitute a waiver of any of the provisions of this Agreement or a waiver of any other default of the other party.

16) ASSIGNMENT

Neither party may assign its rights and obligations under this Agreement without the prior written consent of the other party, except that such written consent is not required for Program Administrator (a) to assign its right to any money due or to become due hereunder, and (b) to assign its rights and obligations to a contracted PACE Program Processor as described in Section 1 and Exhibit A.

17) EFFECT ON SUCCESSORS AND ASSIGNS



This Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

18) **SECTION HEADINGS**

The sections and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement.

IN WITNESS WHEREOF, Municipality and Program Administrator have executed this Agreement as of the date written on the first paragraph of this Agreement.

FOR MUNICIPALITY

Signed by:



Dennis Brown, Selectboard Chair

Duly Authorized Agent

FOR VERMONT ENERGY INVESTMENT CORPORATION

Duly Authorized Agent

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FOR MUNICIPALITY

Signed by:



Melvin E. Adams, Town Manager
Duly Authorized Agent

FOR VERMONT ENERGY INVESTMENT CORPORATION

Duly Authorized Agent

EXHIBIT A

SCOPE OF SERVICES

- Program Administrator or its contracted processor will maintain a dedicated application processing, disbursement and customer education system for the PACE Program and provide daily customer service support at an office and by telephone.
- Program Administrator or its contracted processor will determine applicant and project eligibility for participation in the PACE Program, and process all applications, which will include application of underwriting criteria established by the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration and other qualifying criteria established by Municipality.
- Program Administrator or its contracted processor will collect and retain all of the payments described in Section 3 of the Agreement.
- Program Administrator will conduct the Written Analysis required by 24 V.S.A. §3262(b), unless the statute is modified to preclude the Program Administrator from conducting the analysis.
- Program Administrator or its contracted processor will notify Municipality and the property owner of property owner's acceptance into and enrollment in the PACE Program.
- Program Administrator or its contracted processor will coordinate the preparation of all documents required by the Act or otherwise required for participation in the Program and coordinate their execution prior to allowing a property owner to be enrolled in the PACE District. Municipality and Program Administrator acknowledge that Municipality may be required to coordinate the execution of the documents, in which event Program Administrator shall be relieved of this obligation.
- Program Administrator or its contracted processor will coordinate the recording of all documents required by the Act on Municipality's land records. Recording fees shall be paid by the participating property owner.
- Program Administrator or its contracted processor will confirm whether each Eligible Project has been completed, and upon confirmation of completion will arrange for funds to be disbursed to the project Contractor(s) in conformance with the project documents.
- Program Administrator or its contracted processor will make good-faith efforts to obtain financing for the PACE Program.
- Program Administrator or its contracted processor will manage the collection of assessments for Municipality and any payments to a shared source of funding.

RANDOLPH TOWN CLERK'S OFFICE
Received for Filing
August 22 A.D. 2013
at 8 o'clock 20 minutes AM
Attests [Signature]
Town Clerk

