



## **PACE PROGRAM DESCRIPTION AND GUIDELINES**

### **I. Introduction**

In May 2009, the Vermont legislature approved Act 45 (as amended by Act 47 in May 2011), authorizing municipalities to create Property-Assessed Clean Energy (“PACE”) districts. Through creation of a PACE district, a municipality is authorized to fund the costs of installing energy efficiency improvements and renewable energy sources, such as solar photovoltaic panels and solar water heating (“Energy Improvements”) permanently affixed to residential property within the boundaries of the district. Eligible property owners who choose to participate in the program (the “PACE Program”) enter into an agreement with the municipality in which the property owner agrees to make the required assessment payments while they are the owner of the property. The funds advanced by the municipality for the installation of the Energy Improvements are paid back through an assessment on the improved property which is payable in installments and is secured by a lien on the property until the assessment is repaid in full.

The goal of creating a PACE district is to make Energy Improvements more affordable and promote their installation. By advancing the up-front costs of installing Energy Improvements, the PACE Program removes a barrier to greater participation in Vermont’s energy efficiency and renewable energy efforts, thereby promoting energy conservation and climate protection while reducing the participating property owner’s use of fossil fuels.

At the annual or special (*circle one*) meeting held 201\_\_, the voters of the City/Town of \_\_\_\_\_ (“Municipality”) approved a PACE district.

This on \_\_\_\_\_ (*Date*), document is designed to provide a comprehensive explanation of the PACE program for the City/Town of \_\_\_\_\_ (“Municipality”) as approved by the City Council or Select Board (*circle one*) on \_\_\_\_\_ (month day, year).

Amendments or changes to this document shall be duly noticed and passed by resolution of the City Council or Select Board (*circle one*) prior to incorporation into this document.

### **II. Program Eligibility**

#### **A. Eligible Property Owners**

The legal owners of real property within the boundaries of Municipality, who meet the minimum requirements, are eligible to participate in the PACE Program. The minimum eligibility requirements are: property tax payments are current and there have been no delinquent payments for three years prior to application; there are no involuntary liens (e.g., tax, judgment or mechanics liens) on the property; property owner is not in bankruptcy; property is in compliance with applicable housing codes, if any; and owners meet the PACE underwriting criteria established by the Vermont Department of Financial Regulation.

## **B. Eligible Properties**

Dwellings as defined by the federal Truth in Lending Act, meaning a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives, are eligible to participate in the PACE Program so long as property taxes are being paid on the dwelling by the owner of the dwelling. The property cannot be an asset in any pending bankruptcy proceeding.

## **C. Eligible Energy Improvements**

Pursuant to statute, Vermont's energy efficiency utilities developed a list of eligible energy efficiency projects and make it available to the public on or before July 1 of each year. The list of eligible projects may be found on the Efficiency Vermont website at

[http://www.encyvermont.com/docs/for\\_my\\_home/PACE/PACE\\_eligible\\_measures.pdf](http://www.encyvermont.com/docs/for_my_home/PACE/PACE_eligible_measures.pdf)

Generally, Energy Improvements must be permanently attached to the participating property, and must reduce the net energy requirements of the participating property. The cost of the Energy Improvements to be financed through the PACE Program must comply with the Program Parameters set forth in Section IV, below. Only projects installed by contractors normally employed in the business of designing and installing heating, weatherization and renewable energy improvements are eligible.

## **D. Participating Contractors**

Efficiency Vermont and Burlington Electric Department (in Burlington) maintain lists of qualified installation contractors and will provide those lists to the property owner upon request. Installation contractors must be properly insured and appropriately licensed or certified. Energy Efficiency contractors must be certified by the Building Performance Institute as Home Performance with ENERGY STAR<sup>®</sup> contractors or possess the appropriate propane or fuel oil certification from the State of Vermont Department of Public Safety. The installation of renewable energy improvements must be completed by members of the Vermont Solar & Wind Partnership established by Renewable Energy Vermont.

## **E. Eligible Costs**

Installation and acquisition costs of the Energy Improvements are eligible for financing under the PACE Program. Eligible installation costs may include, but are not limited to, mandatory contributions to the Reserve Fund (discussed in Section V(J) below), energy audit consultations, labor, design, drafting, engineering, permit fees, the PACE application fee and applicable inspection charges. Eligible acquisition costs may include, but are not limited to, the unit price of eligible equipment and any taxes and shipping costs associated with the acquisition. For retrofit projects such as home remodeling, only that portion of the costs used to retrofit existing structures with eligible Energy Improvements or improvements required by applicable health and safety codes in order to install the Energy Improvements are eligible for financing under the PACE Program. Repairs and/or new construction costs do not qualify for financing under the PACE Program except to the extent that such construction is required for the specific type of approved Energy Improvement and does not exceed 50% of the total project cost.

## **F. Permit and Conformance Requirements**

The property owner is required to properly obtain, comply with and keep in effect all permits, licenses and approvals that are required to be obtained from any governmental authority in order to commence and complete installation of the Energy Improvements, and upon request, shall promptly deliver copies

of all such permits, licenses and approvals to Municipality or its designated agent. The property owner also must grant Municipality, and its agents and representatives, the right to enter and visit the participating property at reasonable times, after giving reasonable notice to the property owner, for the purposes of observing the installation of the Energy Improvements. Municipality will make reasonable efforts during any site visit to avoid interfering with property owner's use of the participating property. The property owner shall also allow Municipality, and its agents and representatives, to examine and copy records and other documents of the property owner which relate to the Energy Improvements.

### **III. Roles and Responsibilities**

#### **A. Municipality**

Municipality is responsible for holding the initial vote that is required to create a PACE District. Municipality held this vote on the date shown in the Introduction above.

Vermont's PACE legislation outlines a number of specific responsibilities for Municipality including:

- designing the PACE program;
- entering into a written agreement with the participating property owner;
- following underwriting criteria established by the Vermont Department of Financial Regulation;
- recording the lien for participating properties (and discharging it when fully repaid);
- participating in the Reserve Fund established by 24 V.S.A. § 3269; and
- collecting the PACE assessment along with the property tax for the participating property.

Municipality may act on its own or in concert with other municipalities.<sup>1</sup> Municipality may also assign these responsibilities to an independent Program Administrator. Municipality has elected to contract with the Efficiency Vermont to act as Program Administrator. (See Program Administrator Contract.) Efficiency Vermont has elected to contract with Opportunities Credit Union for PACE Processing services including the underwriting of PACE applications, advancing funds on behalf of Municipality, preparing closing documents, collecting PACE repayments and repaying investors in the PACE Program,

Municipality also may act in concert with other municipalities in the State to secure funding for its PACE Program and to participate in the Reserve Fund described above. To this end, Municipality may enter into the Vermont PACE Interlocal Contract.

Municipality may incur debt or otherwise finance a PACE district, but if it chooses to do so, it must pledge its full faith and credit.

Municipality is expressly NOT liable for PACE project performance failure.<sup>2</sup>

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<sup>1</sup>24 VSA § 2291 (23).

<sup>2</sup> 24 V.S.A. §3265 (a).

## **B. Energy Efficiency Utility (EEU ) - currently Efficiency Vermont and Burlington Electric Department**

The EEU is required to develop and annually maintain a list of eligible energy efficiency projects. The EEU must also review and approve the energy improvement cash flow analysis that is required to be performed for proposed PACE projects.

The EEU must also provide information about PACE districts to municipalities throughout the State and administer the Reserve Fund established by 24 VSA §3269.

## **C. Program Administrator**

The Program Administrator is authorized to act on behalf of Municipality and one or more other municipalities to oversee the administration of the PACE program. Services provided by the Program Administrator include:

- Assisting municipalities with the design and creation of the PACE District;
- Preparing and sharing sample documents including legal documents, applications, and marketing resources; and
- Negotiating with potential sources of financing for one or more PACE districts.

## **D. PACE Processor**

Efficiency Vermont as the Program Administrator has elected to subcontract with Opportunities Credit Union to provide the banking services related to PACE. Specific services to be provided by the PACE Processor include:

- Reviewing applications for conformance with underwriting criteria established by the Vermont Department of Financial Regulation;
- Preparing and arranging for the execution and filing of the PACE legal documents
- Managing the collection of assessments from multiple municipalities and any payments due to any funding source.

## **E. Funding Source(s)**

The funding source(s) contribute to a credit facility designed to finance PACE assessments for one or more Vermont municipalities. Every effort shall be made to secure funding in amounts and at terms sufficient to meet the needs of all participants in any particular cycle of applications.

## **F. Participating Property Owners**

Interested property owners in Municipality must apply to be a participant in the PACE district, identify the proposed improvements and/or energy efficiency measures to be financed through the PACE program and select the qualified contractor to install the improvements. The participating property owner must also have an analysis performed of the costs and energy savings for the proposed improvements; the analysis must be prepared by the EEU or another entity deemed qualified by the municipality.<sup>3</sup>

Once accepted into the PACE program, participating property owners must enter into an Assessment Agreement with Municipality to access funds. They must then pay the PACE assessment when due and meet all of the other terms and conditions included in the PACE documents.

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<sup>3</sup> 24 V.S.A. §3262(b).

### **G. Non- Participants**

All legal voters in the community may vote on a referendum to create a PACE District. Once the district has been created, non-participants have no obligation to the District.

### **H. Contractor(s)**

Qualified contractors must be utilized for the installation of any energy improvements in or on properties that the property owner intends to enroll in the PACE District. Improvements may not be “do-it-yourself” projects.

## **IV. Program Parameters**

### **A. Minimum Assessment Amount**

The minimum amount available for financing under the PACE Program is Three Thousand Five Hundred Dollars (\$3,500.00).

### **B. Maximum Assessment Amount**

The maximum amount available for financing under the PACE Program shall be the lesser of: 1) fifteen percent (15%) of the assessed value of the participating property; or 2) Thirty Thousand Dollars (\$30,000.00), including the allocation to the Reserve Fund (see Section V(J) below).

### **C. Property Obligations to Value**

The combined amount of any outstanding mortgage obligations for the participating property and the amount to be funded under the PACE Program shall not exceed ninety percent (90%) of the assessed value of the property.

### **D. Rebates and Incentives**

As a condition to participating in the PACE Program, the property owner shall fully participate in all rebate and incentive programs offered by Efficiency Vermont, Burlington Electric Department (in Burlington) and Vermont Gas Systems, Inc. for which their planned Energy Improvements qualify. The amount of any such rebates or incentives shall be deducted from the amount to be funded under the PACE Program.

The property owner may qualify for tax credits through ENERGY STAR<sup>®</sup> and State incentives for installation of the Energy Improvements. Property owners should consult with their tax advisors to determine whether they qualify for tax credits or deductions, including whether the property owner may also be able to deduct the interest component of the PACE assessment on their tax returns. In no event shall the Municipality, the Program Administrator, the PACE Processor, or any of their agents or representatives be responsible for any federal or state tax consequences resulting from participation in the PACE Program.

### **E. Duration of Assessment**

The term of the PACE assessment may not exceed the average lifetime of all Energy Improvements, weighted by cost, and in no event shall exceed twenty (20) years. Property owners may request a shorter assessment term, provided there is an adequate level of assurance the property owner has the ability to meet the assessment payment obligations over the shorter period. Final determination of the term is at the discretion of the PACE Processor. Municipality shall release the lien created by the PACE

assessment once the assessment and all accrued interest thereon, together with any applicable penalties, costs, fees, and other charges, have been paid in full. Assessments may be paid early without penalty, provided they are paid in full.

#### **F. Interest Rate**

The interest rate applicable to the amount financed under the PACE Program is dependent upon the costs incurred by Municipality, the Program Administrator, and the PACE Processor in procuring and administering funds for the PACE Program. The interest rate chargeable to the property owner will be set at the time of entering into the Assessment Agreement and will not change over the life of the assessment.

#### **G. Administrative Fees**

Vermont law obligates property owners participating in the PACE Program to cover the costs of operating the PACE district. The property owner will be required to pay a non-refundable application fee at the time of submitting an application for participation in the PACE Program. The Program Administrator will also levy an Annual Assessment Fee against each participating property, which shall be added to and collected in the same manner as the assessment. Property owner shall be responsible for any fees associated with recording or discharging the Assessment Agreement as required by Vermont law.

#### **H. Property Owner Consent**

Participation in the PACE Program is purely voluntary on the part of the property owner. By entering into an Assessment Agreement with Municipality, property owners indicate their consent to subject the participating property to a PACE assessment.

#### **I. Mortgagee Consent**

Vermont law requires the property owner to provide existing mortgage holders notice of intent to enter into an Assessment Agreement with Municipality at least thirty (30) days prior to entering into the agreement. A sample Notice to Lender form for the purpose of providing the required notice to existing mortgage holders will be provided with the application. The property owner shall warrant and represent that service of the Notice to Lender was made to existing mortgage holders in the Assessment Agreement.

### **V. Process and Procedures**

#### **A. Pre-screening**

The Program Administrator will create a form that assists property owners in determining whether or not they are eligible for participation in the PACE program. Property owners will need to know the Grand List value of their dwelling and the outstanding balance of any loans secured by a mortgage in order to complete the form.

#### **B. Initial Energy Audit**

In order to identify the energy improvements that save the most energy and money, it is strongly recommended that the property owner have an energy audit of the participating property conducted by a certified Home Performance with ENERGY STAR contractor certified by the Building Performance

Institute, a Vermont Gas energy auditor, or other qualified entity approved by the Program Administrator. The intent of the energy audit is to inform the property owner about eligible improvements, available financing mechanisms, probable costs and savings, and tax rebate/credit programs available from federal, state, and local agencies. Contact information for energy auditors may be obtained from Efficiency Vermont, Vermont Gas and, in Burlington, Burlington Electric Department (BED). The costs of the energy audit may be included in the amount financed under the PACE Program, and audit fee rebates may be available from Efficiency Vermont, Vermont Gas and BED.

### **C. Definition of Scope and Cost**

The property owner should meet with a qualified installation contractor to define the scope and the cost of the Energy Improvements proposed for installation at the participating property.

### **D. Written Analysis**

Vermont law requires that Municipality designate a qualified entity (typically Efficiency Vermont or Burlington Electric Department in Burlington) to perform an analysis to quantify the project costs, energy savings and estimated carbon impacts of the proposed Energy Improvements, including an annual cash-flow analysis (“Written Analysis”). The Written Analysis may be amended to reflect approved changes to the Energy Improvements. A summary of the final Written Analysis shall be recorded in Municipality’s land records as required by Vermont Law.

### **E. Application and Review Process**

If the property owner decides to proceed with participation in the PACE Program after receiving the Written Analysis, the property owner shall submit an application on a form provided by the PACE Processor within the proscribed subscription period. The application must be signed by all owners of the participating property, and shall include, at a minimum, the following: 1) the non-refundable application fee; 2) the Written Analysis of the proposed Energy Improvements as approved by the EEU; 3) a copy of the owner’s deed to the participating property; 4) the assessed value of the property; 5) the total amount of all outstanding indebtedness on the participating property; 6) standard representations (i.e. no bankruptcy filings within past seven (7) years, not a party to a lawsuit or legal action, no previous foreclosure action, property in compliance with any applicable permits or housing codes, no tax delinquencies in past three (3) years); 7) identity of property owner’s qualified installation contractor(s); and 8) additional information necessary to comply with underwriting criteria established by the Vermont Department of Financial Regulation.

### **F. Underwriting Process**

Underwriting criteria established by the Department of Financial Regulation shall be applied by the PACE Processor.

If the application is denied, the PACE Processor shall inform the property owner of the reasons for denial. Reasons for denial may include, but are not limited to: 1) involuntary liens filed against the property; 2) unpaid collections, judgments or charge offs; 3) insufficient income to repay the assessment; 4) property or owner does not meet eligibility requirements; 5) proposed Energy Improvements are ineligible; 6) property owner has been in bankruptcy within past seven (7) years; or 8) misrepresentation on the application.

If the application is approved, the property owner will be informed of this fact and, following thirty (30) days advance notice to existing mortgage holders, property owner and PACE Processor will set a Closing Date.

## **G. Documentation and Funding of Escrow Account**

Participating property owners will enroll in Municipality's PACE District by executing an Assessment Agreement with Municipality. The Assessment Agreement sets forth the terms of participation including the amount to be advanced by the PACE Processor on behalf of Municipality to fund installation of the Energy Improvements (the "Disbursement Amount"), the amount of the PACE assessment and the creation of a lien on the participating property to secure repayment of the Disbursement Amount. Property owners must sign and notarize the Assessment Agreement. Upon execution of the Assessment Agreement, a lien for the full amount of the assessment will be placed on the participating property.

In addition to the Assessment Agreement, participants will be required to execute: a Notice of Special Assessment, which will be filed in Municipality's Land Records and a Risk Disclosure Acknowledgement;. All of the closing documents shall be prepared by the PACE Processor.

The "Maximum Expected Assessment Amount" (which may include the contribution to the Reserve Fund described in J below as well as the cost of an audit, as described in B above) will be disbursed into an escrow account on behalf of the property owner, as of the date of closing. Interest shall be charged to the participating property owner as of the date of disbursement into the escrow account.

## **H. Right to Terminate**

Property owners shall have the right to terminate the PACE Assessment without any future obligations, within three business days from the date of executing the Assessment Agreement. Termination must be made by written notice to the PACE Processor.

## **I. Final Disbursement Process and Procedures**

Upon completion of the Energy Improvements, submission by the property owner of the Work Completion Document and review of the final invoice by the Program Administrator, the PACE Processor will disburse the escrowed funds. Disbursement shall be used solely for eligible costs directly related to the Energy Improvements. The Disbursement Amount may be released directly to the property owner's qualified installation contractor (the "Contractor") or the property owner in accordance with the process set forth below. Neither the PACE Processor nor Municipality shall have any obligation to disburse the Disbursement Amount unless and until each of the following conditions is satisfied or any such condition is expressly waived by the PACE Processor acting on behalf of the Municipality:

(1) The receipt by Program Administrator of the work completion documents (the "Work Completion Documents"), stating the actual cost of the Work and that the Work is complete. Such certification shall be in form and substance acceptable to Program Administrator and requires the signature of both the Owner and the Contractor.

(2) The receipt by the PACE Processor of such other documents and instruments as it may require, including but not limited to, if applicable, the sworn statements of Contractor(s) and releases or waivers of lien, all in compliance with the requirements of applicable law.

(3) Owner has, as appropriate, executed and delivered to the PACE Processor the Agreement Documents and other such documents or instruments pertaining to the Disbursement Amount or the Work as it may require.

(4) The PACE Processor shall have determined that, as of the date of disbursement of the Disbursement Amount, the representations of the Owner contained in the Agreement Documents are true and correct, and no Default as defined in the Assessment Agreement shall have occurred or be continuing.

(5) No stop payment or mechanic's lien notice pertaining to the Work has been served upon Municipality and remains in effect as of the date of disbursement of the Disbursement Amount.

Upon satisfaction or waiver of the conditions described above, the PACE Processor will disburse the Disbursement Amount to Contractor within two business days of receiving authorization from the Program Administrator.

If any funds remain in the escrowed account, they will be used to reduce the outstanding amount of the assessment.

### **J. Installation of Energy Improvements**

Installation of the Energy Improvements in conformance with the Agreement Documents shall be the responsibility of the property owner. The PACE Processor shall be under no obligation to disburse the Disbursement Amount to Contractor until the Energy Improvements are installed in conformance with the Agreement Documents.

### **K. Reserve Fund**

A Reserve Fund has been created to provide for the payment of any past due and remaining principal balances on PACE assessments in the event of foreclosure upon a property participating in the PACE Program. Owner's payment into the Reserve Fund shall be 2% of the assessment amount as determined by the Commissioner of Financial Regulation and shall be included in the Assessment. The PACE Processor shall disclose to the property owner the exact amount of the required payment into the Reserve Fund at the time of Fund Disbursement. Once disclosed, the amount of the Reserve Fund payment shall not change over the life of the Assessment.

### **L. Repayment and Collection of the Assessment**

The first assessment payment will be due on the first day of the second month following the execution of the Assessment Agreement. A regular monthly payment shall be established upon disbursement of the final amount of the Assessment.

A property owner must pay the agreed-upon PACE assessment regardless of personal financial circumstances, the condition of the property, or the performance of the Energy Improvements. Property owners should not apply for financing if they are not certain they can pay the PACE assessment. **The failure to pay the PACE assessment in full or in part will result in financial repercussions, including penalties, interest and, eventually, foreclosure on the property by Municipality.**

#### **1) Prepayment**

There shall be no penalty or premium for prepayment of the outstanding balance of an assessment so long as the balance is prepaid in full.

## **2) Regular Payments**

Property Owners shall have the option of being billed monthly or making electronic payments to pay their assessment.

### **M. Monitoring**

The PACE Processor shall monitor each PACE Assessment to ensure compliance with the Agreement's terms and conditions.

### **N. Delinquent and Non-payment Procedures**

#### **1) Delinquent Payments**

In the event of non-payment, there is a need for coordination and communication between the PACE processor, the municipality and the property owner. Every effort will be made to give the property owner an opportunity to remedy the delinquency. Nonetheless, any overdue payment shall be considered as if it were a non-payment of municipal taxes and shall be charged late fees effective immediately upon non-payment. The following procedures shall be followed when payments are not received on the due date:

A late payment fee of 1% of the outstanding amount shall be imposed if payments are not received when due. An additional 1% shall be assessed on the delinquent amount for every month the amount remains unpaid up to a maximum of 12%. The interest fee does not compound. This fee shall be billed by and sent to the PACE processor on behalf of the credit facility.

For the purpose of PACE assessments, the 8% penalty permitted by 32 VSA 1674(2) shall be assessed once payments are 90 days past due. The penalty shall apply only to the overdue payment, not to the outstanding balance of the assessment. The penalty shall be forwarded to the municipality to cover costs associated with collection. Once payments are 90 days past due, the PACE Processor will assign collection back to the municipality and its tax collector.

The following notice procedures shall also apply:

- 5 days past due – reminder phone call from PACE Processor to participant;
- 15 days past due – reminder phone call from PACE Processor to participant;
- 30 days past due – reminder phone call from PACE Processor to participant, phone or e-mail notice to Town Treasurer who shall inform the tax collector;
- 60 days past due – PACE Processor sends written notice of delinquency to participant with copy to municipality

90 days past due – PACE Processor sends 2<sup>nd</sup> letter noticing delinquency to participant with copy to municipality. PACE Processor communicates with municipality to determine appropriate approach to collection.

## 2) Assessment in Default

Assessment shall be considered in default if it is 90 or more days past due of the date the municipality would impose the late payment penalty.<sup>4</sup> All assessments in default shall be assigned to the municipality for collection action.

Assessments in default shall be subject to the 8% penalty municipalities are allowed to charge on delinquent taxes. Recovered penalties shall be paid to the municipality.

## 3) In the event of foreclosure

In the event of a foreclosure action, the past due balances of any PACE assessment unpaid as of the date the action is filed shall be due for payment, with future PACE-assessment payment obligations to continue as a lien on the property.

### O. Discharge of Lien

The Municipality or its agent shall discharge the lien upon receiving full repayment of the assessment.

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<sup>4</sup> Some municipalities impose the penalty on installments, other charge it only if the final payment is past due. This clause is designed to allow for both options.