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PROPERTY ASSESSED CLEAN ENERGY (PACE) ADMINISTRATION CONTRACT

THIS Property Assessed Clean Energy (PACE) Administration Contract (the "Contract") is entered into this 28th day of December, 2010, by and between the Town of Kennebunk, a municipal corporation duly organized and existing under the laws of the State of Maine whose mailing address is 1 Summer Street, Kennebunk, Maine (the "Municipality") and the Efficiency Maine Trust, a legal entity and instrumentality of and a body corporate and politic under the laws of the State of Maine (the "Trust"). The foregoing also are referred to herein collectively as the "Parties" or singly as "Party."

WHEREAS, the 124th Maine Legislature has enacted Public Law 2009, Chapter 591, "An Act to Increase the Affordability of Clean Energy for Homeowners and Businesses," also known as "the Property Assessed Clean Energy Act" or "the PACE Act"; and

WHEREAS, that Act authorizes a municipality that has adopted a Property Assessed Clean Energy ("PACE") Ordinance to establish a PACE Program, so that owners of qualifying property can access financing for energy saving improvements to their properties located in the municipality; financed by funds awarded to the Efficiency Maine Trust under the Federal Energy Efficiency and Conservation Block Grant (EECBG) Program and by other funds available for this purpose, and to enter into a contract with the Trust to administer functions of its PACE Program; and

WHEREAS, the Municipality has adopted a PACE Ordinance; and

WHEREAS, the Parties wish to establish their respective responsibilities in the administration of the PACE Program.

WITNESSETH:

NOW, THEREFORE, for and in consideration of the covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS.** Capitalized terms used in this Contract shall have the meanings given them in 35-A M.R.S.A. §10153 unless otherwise specified herein. In addition, these terms are defined as follows:

1.1. **PACE agreement.** "Pace Agreement" means an agreement between the owner of qualifying property and the Trust that authorizes the creation of a PACE Mortgage on qualifying property and that is approved in writing by all owners of the qualifying property at the time of the agreement, other than mortgage holders.

1.2. **PACE District.** "PACE District" means the area within which the Municipality establishes a PACE Program under this Contract, which is all of that area within the Municipality's boundaries.

1.3. **PACE Loan.** "PACE Loan" means a loan made to the owner(s) of a Qualifying Property for an Energy Saving Improvement.

2. TRUST'S RESPONSIBILITIES. The Trust shall, itself or through its authorized agents:

2.1. Administration. Administer the functions of a PACE Program which administration shall include, without limitation:

- A. the Trust will enter into PACE Agreements with owners of Qualifying Property in the Municipality's PACE District;
- B. the Trust, or its agent, will create and record a Notice of the PACE Agreement in the appropriate County Registry of Deeds to create a PACE Mortgage;
- C. the Trust, or its agent, will disburse the PACE Loan to the property owner;
- D. the Trust, or its agent, will send PACE Assessment statements with payment deadlines to the property owners;
- E. the Trust, or its agent, will be responsible for collection of the PACE Assessments;
- F. the Trust, or its agent, will record any lien, if needed, due to nonpayment of the PACE Assessment;
- G. the Trust or its agent, promptly shall record the discharge of a PACE mortgage upon full payment of the PACE loan;
- H. the Trust, or its agent, will be responsible for management of federal grant funds; and
- I. the Trust, or its agent, will ensure the collection of data required to quantify carbon savings and to facilitate access to and eligibility for voluntary carbon markets, for federal grants for energy efficiency and for other incentive programs that support Energy Saving Improvements.

2.2. Terms and Conditions. Pursuant to 35-A M.R.S.A. §10154, the Trust may establish terms and conditions under which municipalities and property owners may participate in a PACE Program established thereunder, and the Parties agree that they, the PACE Program hereunder and this Contract are subject to those terms and conditions as amended from time-to-time.

3. MUNICIPALITY'S RESPONSIBILITIES.

3.1. Education and Outreach Programs. The Municipality agrees to adopt and implement an education and outreach program so that owners of property in the Municipality are made aware of home energy saving opportunities, including the opportunity to finance Energy Saving Improvements with a PACE Loan.

3.2. Conformity with Home Energy Savings Program. The Municipality agrees to conform its PACE Program to the requirements contained in the Home Energy Savings Program.

3.3. Acceptance and Disbursement of Funds. The Municipality agrees to accept PACE funds from the Trust and to disburse PACE funds back to the Trust as needed to satisfy the conditions of the federal grants and to allow the Trust to fund and administer a uniform system of municipal PACE Programs throughout the State.

3.4. Assistance and Cooperation. The Municipality agrees to cooperate with the Trust in the administration of the Municipality's PACE Program, including but not limited to, providing information about applicant properties including property tax payment and lien status, taxable value of residential properties in town, and providing reasonable and necessary aid to the Trust for required data collection, recordkeeping and reporting functions relative to the PACE Program in the PACE District, and providing reasonable and necessary support to the Trust's PACE loan, PACE Assessment, and billing and collection functions.

3.5. Conformity. If standards or rules and regulations are adopted by any State or federal agency subsequent to the Municipality's adoption of a PACE Ordinance or participation in a PACE Program and those standards or rules and regulations substantially conflict with the Municipality's manner of participation in the PACE Program, the Municipality, should it desire to continue its participation in the PACE Program, will be required to take necessary steps to conform its participation to those standards or rules and regulations.

4. TERM.

4.1. This Contract is for a period of three (3) years and shall automatically be renewed for additional periods of three (3) years unless either Party provides the other with ninety (90) days' advance written notice of intent not to renew this Contract.

5. TERMINATION.

5.1. Either Party may terminate this Contract for convenience by providing the other with ninety (90) days' advance written notice of termination; provided, however, in no event may the Trust terminate this Agreement or terminate its provision of the required administrative services in Section 2.2 above unless it first finds at no cost to the Municipality a suitable person, firm or agency to provide such administrative services for any PACE Loans already in place hereunder. On and after the date of termination, the Municipality no longer will have a PACE Program administered by the Trust except for those PACE Loans already secured by PACE Mortgages as of the date of termination.

6. LIABILITY.

6.1. Notwithstanding any other provision of law to the contrary, municipal officers and municipal officials, including, without limitation, tax assessors and tax collectors, are not personally liable to the Trust or to any other person for claims, of whatever kind or nature, under or related to a PACE Program established under this Contract, including, without limitation, claims for or related to uncollected PACE Assessments.

6.2. Other than the fulfillment of its obligations specified in a PACE Agreement, the Municipality has no liability to a property owner for or related to Energy Saving Improvements financed under a PACE Program.

7. MISCELLANEOUS PROVISIONS

7.1 Notices. All notices, demands or other communications made pursuant to this Contract shall be in writing and shall be sent by (i) registered or certified United States mail, postage prepaid, (ii) by overnight courier, or (iii) by facsimile. Such notice shall be deemed effective upon delivery addressed as follows:

To the Municipality:

Town of Kennebunk
1 Summer Street
Kennebunk, ME 04043
Attention: Town Manager

To the Trust:

Efficiency Maine Trust
101 Second Street
Hallowell, ME 04347
Attention: _____

7.2 Entire Agreement, Modifications. This Contract constitutes the entire agreement of the Parties, and neither Party shall be bound by any statement or representation not contained herein. Except as provided herein, this Contract cannot be changed, amended or modified, except by another agreement in writing signed by all Parties hereto or by their respective successors in interest.

7.3 Headings. The section headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or interest of any provisions of this Contract.

7.4 Severability. If any section, term, covenant, or condition of this Contract or the application thereto to any person or circumstances shall, to any extent be illegal, invalid or unenforceable because of judicial construction, the remaining sections, terms, covenants, and conditions of this Contract, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each section, term, covenant, or condition of this Contract shall be valid and be enforced to the fullest extent permitted by Law.

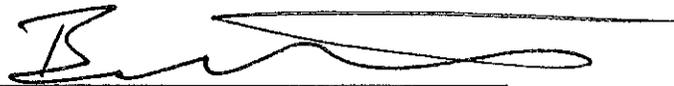
7.5 Governing Law, Remedies. This Contract shall be governed by and construed in accordance with the laws of the State of Maine. Except as otherwise agreed by the Parties in writing, all disputes, claims, counterclaims and other matters in question between the Municipality and the Trust arising out of or relating to this Contract shall be decided by a Maine court of competent jurisdiction.

7.6 Assignment; Successors and Assigns. This Contract may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably conditioned, delayed or withheld. This Contract shall benefit and be binding upon the Parties hereto and their respective permitted successors and assigns.

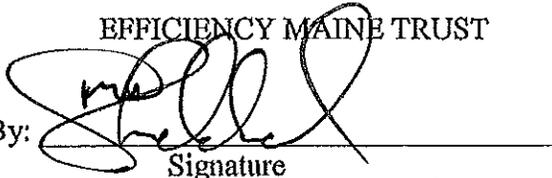
7.7 Non-Waiver. Except as expressly provided in this Contract, the failure or waiver, or successive failures or waivers on the part of either Party hereto, in the enforcement of any paragraph or provision of this Agreement shall not render the same invalid nor impair the right of either Party hereto, its successors or Contract permitted assigns, to enforce the same in the event of any subsequent breach thereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Property Assessed Clean Energy (PACE) Administration Contract, to be executed by their duly authorized representatives as of the date first set forth above.

TOWN OF KENNEBUNK (municipality)

By: 
Signature
Barry Tibbets
Print Name
Its: Town Manager (Title)

EFFICIENCY MAINE TRUST

By: 
Signature
Michael Stubbins
Print Name
Its: Executive Director (Title)