

**TOWN OF LYMAN
PROPERTY ASSESSED CLEAN ENERGY (PACE) ORDINANCE**

Adopted October 3, 2011

PREAMBLE

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 Town, 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 Town of Lyman (the "Town") wishes to establish a PACE program; and

NOW, THEREFORE, the Town hereby enacts the following Ordinance:

ARTICLE I - PURPOSE AND ENABLING LEGISLATION

Section 1 - Purpose.

By and through this Ordinance, the Town declares as its public purpose the establishment of a municipal program to enable its citizens to participate in a Property Assessed Clean Energy ("PACE") program so that owners of qualifying property can access financing for energy saving improvements to their properties located in the Town. The Town declares its purpose and the provisions of this Ordinance to be in conformity with federal and State laws.

Section 2 - Enabling Legislation.

The Town enacts this Ordinance pursuant to 35-A M.R.S.A. § 10151, *et seq.*

ARTICLE II - TITLE AND DEFINITIONS

Section 3 - Title.

This Ordinance shall be known and may be cited as the "Town of Lyman Property Assessed Clean Energy (PACE) Ordinance" (the "Ordinance").

Section 4 - Definitions.

Except as specifically defined below; words and phrases used in this Ordinance shall have their customary meanings; as used in this Ordinance, the following words and phrases shall have the meanings indicated:

1. **Energy saving improvement.** "Energy saving improvement" means an improvement to qualifying property that is new and permanently affixed to qualifying property and that:

A. Will result in increased energy efficiency and substantially reduced energy use and:

(1) Meets or exceeds applicable United States Environmental Protection Agency and United States Department of Energy Energy Star program or similar energy efficiency standards established or approved by the Trust; or

(2) Involves air sealing, insulating, and other energy efficiency improvements of residential, commercial or industrial property in a manner approved by the Trust; or

B. Involves a renewable energy installation or an electric thermal storage system that meets or exceeds standards established or approved by the trust.

2. **Municipality.** "Municipality" shall mean the Town of Lyman.

3. **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.

4. **PACE assessment.** "PACE assessment" means an assessment made against qualifying property to repay a PACE loan.

5. **PACE district.** "PACE district" means the area within which the Municipality establishes a PACE program hereunder, which is all that area within the Municipality's boundaries.

6. **PACE loan.** "PACE loan" means a loan, secured by a PACE mortgage, made to the owner(s) of a qualifying property pursuant to a PACE program to fund energy saving improvements.

7. **PACE mortgage.** "PACE mortgage" means a mortgage securing a loan made pursuant to a PACE program to fund energy saving improvements on qualifying property.

8. **PACE program.** "PACE program" means a program established under State statute by the Trust and a municipality under which property owners can finance energy savings improvements on qualifying property.

9. **Qualifying property.** "Qualifying property" means real property located in the PACE district of the Municipality.

10. **Renewable energy installation.** "Renewable energy installation" means a fixture, product, system, device or interacting group of devices installed behind the meter at a qualifying property, or on contiguous property under common ownership, that produces energy or heat from renewable sources, including, but not limited to; photovoltaic systems, solar thermal systems, biomass systems, landfill gas to energy systems, geothermal systems, wind systems, wood pellet systems and any other systems eligible for funding under federal Qualified Energy Conservation Bonds or federal Clean Renewable Energy Bonds.

11. **Trust.** "Trust" means the Efficiency Maine Trust established in 35-A M.R.S.A. § 10103 and/or its agent(s), if any.

ARTICLE III - PACE PROGRAM

Section 5 - Establishment; funding.

The Municipality hereby establishes a PACE program allowing owners of qualifying property located in the PACE district who so choose to access financing for energy saving improvements to their property through PACE loans administered by the Trust or its agent. PACE loan funds are available from the Trust in municipalities that: (1) adopt a PACE Ordinance; (2) adopt and implement a local public outreach and education plan; (3) enter into a PACE administration contract with the Trust to establish the terms and conditions of the Trust's administration of the municipality's PACE program; and (4) agree to assist and cooperate with the Trust in its administration of the municipality's PACE program.

Section 6 - Amendment to PACE program.

In addition, the Municipality may from time to time amend this Ordinance to use any other funding sources made available to it or appropriated by it for the express purpose of its PACE program, and the Municipality shall be responsible for administration of loans made from those other funding sources.

ARTICLE IV – CONFORMITY WITH THE REQUIREMENTS OF THE TRUST

Section 7 - Standards adopted; Rules promulgated; model documents.

If the Trust or other State or federal agency adopts standards, promulgates rules, or establishes model documents subsequent to the Municipality's adoption of this Ordinance and those standards, rules or model documents substantially conflict with this Ordinance, the Municipality shall take necessary steps to conform this Ordinance and its PACE program to those standards, rules, or model documents.

ARTICLE V – PROGRAM ADMINISTRATION; MUNICIPAL LIABILITY

Section 8 - Program Administration.

1. PACE Administration. Pursuant to 35-A M.R.S.A. §10154(2)(A)(2) and (B), the Municipality may enter into a PACE administration contract with the Trust to administer the functions of the PACE program for the Municipality. The PACE administration contract with the Trust will establish the administration of the PACE program including, without limitation, that:

- 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 owner;
- 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 on behalf of the Municipality, promptly shall record the discharges of PACE mortgages upon full payment of the PACE loan.

2. Assessments Not a Tax. PACE assessments do not constitute a tax but may be assessed and collected by the Trust in any manner determined by the Trust and consistent with applicable law.

Section 9 - Liability of Municipal Officials; Liability of Municipality.

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, including, without limitation, claims for or related to uncollected PACE assessments.

2. Other than the fulfillment of its obligations specified in a PACE administration contract with the Trust entered into under Article V, Sec. 8(1) above, a municipality has no liability to a property owner for or related to energy savings improvements financed under a PACE program.

PROPERTY ASSESSED CLEAN ENERGY (PACE) ADMINISTRATION CONTRACT

THIS Property Assessed Clean Energy (PACE) Administration Contract (the "Contract") is entered into this 3rd day of October, 2011, by and between the **INHABITANTS OF THE TOWN OF LYMAN**, a municipal corporation duly organized and existing under the laws of the State of Maine, whose mailing address is 11 South Waterboro Road, Lyman, ME 04002 (the "Town"), and the **EFFICIENCY MAINE TRUST**, a body corporate and politic established pursuant to the "Efficiency Maine Trust Act," 35-A M.R.S.A. § 10101 *et seq.*, 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 Town 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:

SECTION 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 Town establishes a PACE Program under this Contract, which is all of that area within Lyman'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.

SECTION 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 Town'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 only as set forth in Section 3.5 below is the PACE Program hereunder and this Contract subject to those terms and conditions as amended from time-to-time.

SECTION 3. TOWN'S RESPONSIBILITIES.

3.1. Education and Outreach Programs. The Town agrees to adopt and implement an education and outreach program so that owners of property in Lyman 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 Town agrees to conform its PACE Program to the requirements contained in the Home Energy Savings Program provided that the Trust provides the Town with a copy of these requirements in writing upon execution of this Contract and thereafter during the term of this Contract as the requirements are amended from time to time.

3.3. Acceptance and Disbursement of Funds. The Town 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 Town agrees to cooperate with the Trust in the administration of the Town'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 Town's adoption of a PACE Ordinance or participation in a PACE Program and those standards or rules and regulations substantially conflict with the Town's manner of participation in the PACE Program, the Town, should it desire to continue its participation in the PACE Program following notice from the Trust of the change in PACE Program standards, rules and regulations, will be required to take necessary steps to conform its participation to those standards, rules and regulations; otherwise, if the Town elects not to conform its participation to those standards, rules and regulations following notice of the same, the Town may terminate this Contract pursuant to Section 5 below.

SECTION 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.

SECTION 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. On and after the date of

termination, the Town 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.

SECTION 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. The Town has no liability to a property owner for or related to Energy Saving Improvements financed under a PACE Program.

SECTION 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 Town:

Town of Lyman
11 South Waterboro Road
Lyman, ME 04002
Attention: Board of Selectmen

To the Trust:

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

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 any choice of law rule that may direct the application of the laws of any other jurisdiction. Except as otherwise agreed by the Parties in writing, all disputes, claims, counterclaims and other matters in question between the Town 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.

INHABITANTS OF THE TOWN OF LYMAN

By: Leo M. Reuk
Signature

Leo M Reuk
Print Name

Its: Selectman (Title)

By: Norman Hutchins
Signature

Norman Hutchins
Print Name

Its: Selectmen (Title)

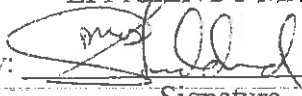
By: 
Signature

SECRETARY
Print Name

Its: STEVEN MARBLE (Title)

By

EFFICIENCY MAINE TRUST

By: 
Signature

Michael D Stoddard
Print Name

Its: Executive Director (Title)