

**ENERGY IMPROVEMENT CORPORATION**  
**AMENDED MUNICIPAL AGREEMENT**

This Agreement made as of this \_\_\_ day of March, 2018 (the “Agreement”), by and between the City of Beacon (the “Municipality”) and the Energy Improvement Corporation (“EIC”) (both the Municipality and EIC may hereinafter be referred to individually as a “Party” and collectively as the “Parties”), sets forth the duties and obligations of each Party in connection with the Municipality’s participation in the Energize NY Benefit Finance Program (the “Program”).

WHEREAS, EIC is a local development corporation duly formed under Section 1411 of the Not-For-Profit Corporation Law of the State of New York, for the purpose of promoting, facilitating and financing energy audits and renewable energy system feasibility studies, energy efficiency improvements and alternative or renewable energy generating systems (as such terms are defined in Section 119-ff of the General Municipal Law of the State of New York) (collectively, the “Energy Improvements”) on properties within its Participating Municipalities (as defined below), thereby promoting the public good by reducing greenhouse gas emissions, mitigating the effect of global climate change and lessening the burdens of government; and

WHEREAS, Participating Municipalities are those municipalities within the State of New York that have: (1) established by local law, pursuant to Municipal Home Rule Law and Article 5-L of the General Municipal Law of the State of New York, a sustainable energy loan program for the provision of financing to the owners of real property located within the Participating Municipality for Energy Improvements, (2) by virtue of signing this Agreement with EIC and pursuant to Article 5-G of the New York State General Municipal Law, authorizes EIC to act on behalf of the Participating Municipality and other Participating Municipalities to carry out the Program through which, among other things, financing is provided to property owners within such Participating Municipality, and (3) satisfied the minimum criteria established by EIC to admit new Participating Municipalities; and

WHEREAS, the Municipality previously executed the EIC Municipal Agreement on July 6, 2015 and the Municipality adopted Local Law No. 5-2015 on July 6, 2015, and has adopted the amended Local Law 6- 2018 on March 5, 2018 pursuant to Article 5-L of the General Municipal Law of the State of New York, which Local Law also authorized EIC to act on its behalf in carrying out its Program; and

WHEREAS, EIC and the Municipality now desire to enter into this Amended Municipal Agreement to reflect amendments to the Program.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

## 1. Duties of EIC

It is understood by the Parties that EIC will be responsible for the performance of the following duties:

- a) The development of finance products for the financing of Energy Improvements (each a “Product”) that will further the purposes of the local laws adopted by the Participating Municipalities and of EIC, which Products shall be submitted to the governing Board of EIC for its consideration and review.
- b) The establishment of one or more Products that, among other things, provide financing to property owners within such Participating Municipality in order to promote, facilitate and finance energy audits and renewable energy system feasibility studies, energy efficiency improvements and alternative or renewable energy generating systems. EIC has currently established two Products, the Energize NY PACE Finance 1.0 (ENY PACE 1.0) and the Energize NY PACE Finance 2.0 (ENY PACE 2.0), which are described in Attachments 1 and 2.
- c) Receive and review applications submitted by property owners within the Municipality for financing of Energy Improvements (“Property Owner(s)”), and the approval or disapproval of such applications in accordance with underwriting procedures and requirements established by EIC.
- d) Review the applications, energy assessments and scopes of work prepared for and by the Property Owners to establish the amount of each financing to be approved pursuant to the requirements of the Products. The governing Board of EIC reserves the right to reject an application for financing for any reason.
- e) Execute finance agreements (the “Energize NY Finance Agreements” or “Finance Agreements”) by and between EIC (on behalf of the Municipality) and the Property Owners for financing of Energy Improvements. The Finance Agreements shall set forth the terms and conditions for the disbursement and repayment of financing and the duties and obligations of each Property Owner and EIC with respect to the acquisition, construction and installation of Energy Improvements. Upon execution of the Finance Agreement by the Property Owner and EIC, the property that is the subject of the Finance Agreement shall be deemed a “Benefited Property.” Copies of all executed Finance Agreements for all Benefited Properties within the Municipality shall be provided to the Municipality by EIC.
- f) Receive and review the certificates of completion submitted by the Property Owners of Benefited Properties (or the contractor hired by the owner of a Benefited Property) during or following installation or construction of Energy Improvements on such Benefited Property, and disburse funds to the Property Owner of the Benefited Property or his/her/its agent upon approval of such certificates in accordance with the terms of the Finance Agreement and the applicable Product.

- g) Deliver to the Municipality an annual report (the “Annual Report”) three months prior to when municipal taxes are due which shall contain information related to each Benefited Property within the Municipality through the end of the immediately preceding calendar year, including:
- i. A list of each newly approved Benefited Property for which the Property Owner or previous Property Owner of the Benefited Property executed a Finance Agreement within the annual time period covered by such report (for which a charge shall be added by the Municipality to its tax rolls in accordance with Paragraph 2b below). All Benefited Properties shall be identified in the Annual Report by address and Tax Map Identification (i.e. section, block and lot);
  - ii. A list of each existing Benefited Property for which the Property Owner or previous Property Owner of such Benefited Property executed a Finance Agreement. All Benefited Properties shall be identified in the Annual Report by address and Tax Map Identification (i.e. section, block and lot);
  - iii. A list of each Benefited Property within the Municipality where all obligations under the Finance Agreement have been satisfied or paid in full during the calendar year including the satisfaction date and a copy of the notice of satisfaction;
  - iv. For each Benefited Property (including each newly approved Benefited Property) for which payments remain due under the Financing Agreement:
    - a. the date of the Finance Agreement,
    - b. the original principal amount of the financing,
    - c. the total principal balance and accrued interest outstanding, and
    - d. the annual payment due to EIC (which shall include principal and accrued interest) associated with such Benefited Property.
  - v. the total annual payment due to EIC from all Benefited Properties in the Municipality (which shall include principal and accrued interest), which amount shall be paid by the Municipality within thirty (30) days of the date upon which payment is due to be made to the Municipality as payment of the municipal tax bill in accordance with Paragraph 2(c) and the balance of any delinquent charge payment reported by the Municipality during the term of the Financing Agreement pursuant to Paragraph 2(d) and;
  - vi. All other information EIC may deem to be relevant to each Benefited Property within the Municipality.

- f) Create accounts (the “EIC Trust Accounts”) to be held by a trustee under the applicable trust indenture authorized by EIC for the purpose of accepting payments from the Municipality made in accordance with Paragraph 2(d) below, and create a separate account (the “EIC Program Administration Fund Account”) to receive the transfer of those funds deposited within the EIC Trust Accounts that constitute payment of EIC administrative fees;
- g) Provide customer service by telephone to the Municipality during the hours of 9:00 a.m. through 5:00 p.m. Monday through Friday, Eastern Standard Time, excluding state and federal holidays;
- h) Upon EIC’s receipt of payment in full under a particular Finance Agreement, send a letter of satisfaction by email to the Municipality notifying it that such Property Owner or subsequent owner of the Benefited Property has satisfied his/her/its obligations under the terms of the Finance Agreement;

## 2. Duties of the Municipality

It is understood by the Parties that the Municipality will be responsible for the performance of the following duties:

- a) Maintain copies received from EIC of each Finance Agreement for a Benefited Property throughout the term of the Finance Agreement relating to such Benefited Property, which shall be maintained until all obligations of the owner of such Benefited Property that are set forth in the Finance Agreement have been satisfied.
- b) Within thirty (30) days of receipt of the Annual Report, add a charge to its tax rolls for each newly approved Benefited Property listed therein, and include such charge in the next ensuing tax levy so that such charge shall be included on and due in the same manner and at the same time and in the same installments as the municipal taxes on real property are due within the Municipality and shall become delinquent at the same times, shall bear the same penalties and interest after delinquency, and shall be subject to the same provisions for redemption and sale as the general municipal taxes on real property of the Municipality.
- c) Within thirty (30) days of the date payment of municipal taxes is due to be made to the Municipality, including the charge pursuant to a Finance Agreement, remit payment to the EIC Trust Accounts in the amount equaling the total annual payments due to EIC from each Benefited Property within the Municipality, regardless of whether the Municipality actually has received such payments from the owner of the Benefited Property. Failure by the Municipality to deliver payments to EIC shall be considered an event of default hereunder.
- d) Deliver to EIC an annual delinquency report (the “Delinquency Report”) no later than (90) days after the due date for the municipal taxes, including the charge, which shall: (i) list each Benefited Property that is delinquent in charge payments

owed for such Benefited Property, (ii) provide the amount owed to the Municipality by the owner of such Benefited Property (including penalties and interest on delinquent charge payments), and (iii) outline the steps taken or to be taken and progress made in recovering delinquent charge payments from the owner of such Benefited Property.

- e) Make all reasonable efforts to assist EIC in carrying out the Program within the Municipality.

### 3. Alternative Products and Modifications

- a) A Municipality that became a Participating Municipality prior to March 1, 2018 may choose to participate in either ENY PACE 1.0 or ENY PACE 2.0 through written notice to EIC of its election. Until such time as the Municipality provides written notice of its choice to participate in ENY PACE 2.0, it shall be deemed to have chosen to remain in ENY PACE 1.0 and financings within the Municipality will be made only under the terms of PACE 1.0. Municipalities that become Participating Municipalities after March 1, 2018 shall participate in PACE 2.0 only. Should EIC develop new Products in the future, participation in the offering of such Products shall be subject to the eligibility and other requirements of any such new Product, and require written notice from the Municipality that it wishes to participate in such Product.
- b) The Municipality may at any time modify the Program by limiting the types of properties which may receive financing for Energy Improvements and/or the amount of financing available within the Municipality and, if the Municipality is offering PACE 2.0, whether construction financing shall be permitted in the Municipality. The Municipality shall provide written notice to EIC of such proposed modification. The proposed modification shall only become effective upon written approval from EIC provided to the Municipality, which shall not be unreasonably withheld. Such approval shall have no effect on the duties and obligations owed by each Party hereto in connection with this Agreement and any Benefited Property for which a Finance Agreement was executed prior thereto.

### 4. Non – Payment

- a) Failure of the Municipality to deliver payments to EIC within thirty (30) days of when due to the Municipality, shall be considered an event of default and EIC shall be entitled to pursue any one or more of the remedies set forth below.
- b) No Participating Municipality shall be responsible for the deficient payment of another Participating Municipality.

### 5. Terms of Membership

The Municipality understands and agrees that membership in EIC is at the discretion of the Board of Directors of EIC and is conditional upon satisfying the membership criteria established by the EIC Board, as may be amended from time to time at the sole discretion of the Board, as well as compliance with the terms of the By-Laws of EIC.

If the Municipality participates in PACE 1.0 and its bond credit rating drops below “A” as rated by Standard and Poors and/or “A2” as rated by Moodys and/or “A” by Fitch Ratings Service, EIC will no longer provide financings to Properties within such Municipality. If the Municipality participates in PACE 2.0 and its bond credit rating drops below “BBB-“ as rated by Standard and Poors and/or “Baa3” as rated by Moodys and/or “BBB-” by Fitch Ratings Service, EIC will no longer provide financings to Properties within such Municipality, unless a capital provider to EIC agrees to provide credit to financings in that Municipality.

## 6. Reserve Funds and Permanent Loss

- a) EIC maintains one or more reserve funds (each a “Reserve Fund”, collectively, the “Reserve Funds”) to protect and compensate EIC, Participating Municipalities, lenders of funds to EIC, and other third parties approved by EIC against potential losses, including without limitation losses suffered by a Participating Municipality resulting from defaulted charge payments only in the event of a Permanent Loss (defined below) with respect to a Benefited Property under ENY PACE 1.0. Certain Reserve Funds may be restricted in that they may only be used in conjunction with financings made to properties located within one or more designated Participating Municipalities. Reserve Funds designated for ENY PACE 1.0 and ENY PACE 2.0 shall be held separate and apart from each other and any reserves established for ENY PACE 1.0 and ENY PACE 2.0 may contain additional restrictions regarding their purposes and uses as required by the applicable Products and indenture. Additional Reserve Funds may be established in the future in connection with new Products implemented by EIC. All Reserve Funds will be held at a bank or trust company located and authorized to do business in New York State and if applicable, held by the trustee under the applicable indenture. Reserve Funds will be invested in accordance with the investment guidelines approved by EIC (the “Investment Guidelines”) as may be amended from time to time.
- b) EIC reserves the right to refuse to make a financing to a property located within the Municipality in the event EIC determines, in its sole discretion, that there are inadequate reserve funds.
- c) A loss shall not be deemed a permanent loss until the Participating Municipality has exhausted all remedies at law in an effort to collect the defaulted charge payments, including but not limited to the redemption and sale of the Benefited Property where the proceeds are not sufficient to recover all amounts paid by the Municipality to EIC after the proceeds of such sale have been proportionately applied to all amounts owed to the Municipality at the time of such sale as a result of the non-payment of taxes (“Permanent Loss”) . In order to collect from the Reserve Fund in the event of a Permanent Loss, the Municipality must provide EIC with all documentation as may be reasonably requested by EIC to document such Permanent Loss and must not be in default to EIC, including having made all payments to EIC when due.

## 7. Remedies Upon Default

Should the Municipality default in any of its obligations hereunder, including but not limited to failure to make payments to EIC as required hereunder, EIC shall be entitled to any remedy it may have at law and as set forth below. EIC may utilize any one or all of these remedies at EIC's sole discretion:

- a) If the Municipality fails to make a required payment to EIC and the Municipality collects penalties or interest from the Property Owner for late payment, the Municipality shall pay to EIC all such penalties or interest attributable to the charge collected by the Municipality on behalf of EIC.
- b) EIC shall have the right to discontinue providing any new financings to Properties located within the Municipality.
- c) EIC may suspend the Municipality's membership in EIC.

This Agreement does not create a debt of the Municipality and the payments by the Municipality payable hereunder are contractual obligations of the Municipality that are subject to and dependent upon appropriations being made from time to time by the Municipality for such purpose and the performance by EIC of its obligations hereunder. The Municipality agrees that its failure to appropriate funds sufficient to make payments due hereunder shall constitute a default under this Agreement.

#### 8. Formation; Authority

Each Party represents and warrants to the other that it has complied with all laws and regulations concerning its organization, its existence and the transaction of its business and that all necessary steps have been taken to authorize it to execute, deliver and perform its respective obligations under this Agreement, and no consent or approval of any third party is required for either Party's execution of this Agreement or the performance of its obligations contained herein. The individual executing this Agreement on behalf of each Party has been and is duly authorized to bind his/her respective Party.

#### 9 No Violation or Litigation

The performance by each Party of its respective obligations contained in this Agreement 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 or any law, regulation or ordinance by which the Party is bound. There is no litigation, action, proceeding, investigation or other dispute pending or threatened against either Party which may impair its ability to perform its respective duties and obligations hereunder.

#### 10. Notices

Any and all notices, demands, or other communications required or desired to be given hereunder by either Party shall be delivered electronically and in writing by certified

mail, return receipt requested as follows:

EIC:  
Mark Thielking  
Executive Director  
Energy Improvement Corporation  
425 Cherry Street  
Bedford Hills, NY 10507  
E-mail: mark@energizeny.org

Kim Kowlaski  
Secretary  
Energy Improvement Corporation  
425 Cherry Street  
Bedford Hills, NY 10507  
secretary@energizeny.org

With a copy to:

James Staudt, Esq.  
McCullough, Goldberger & Staudt, LLP  
1311 Mamaroneck Avenue, Suite 340  
White Plains, NY. 10605  
E-mail: jstaudt@mgslawyers.com

MUNICIPALITY: CITY OF BEACON  
Randy Casale  
Mayor  
City of Beacon  
1 Municipal Plaza  
Beacon, NY 12508  
mayor@cityofbeacon.org

Anthony Ruggiero  
City Administrator  
City of Beacon  
1 Municipal Plaza  
Beacon, NY 12508  
aruggiero@cityofbeacon.org

With a copy to:

Nicholas Ward-Willis  
Keane & Beane, P.C.  
445 Hamilton Avenue  
White Plains, NY 10601



[nward-willis@kblaw.com](mailto:nward-willis@kblaw.com)

Either Party hereto may change its address for purposes of this paragraph by providing written notice to the other party in the manner provided above.

11. Governing Law.

This Agreement shall be construed and governed in accordance with the laws of the State of New York. Any legal action to be brought under this Agreement must be instituted in State or Federal Courts having jurisdiction located in Westchester County, New York.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first written above. The Parties hereto agree that facsimile signatures shall be as effective as if originals.

Date: \_\_\_\_\_, 20\_\_

Energy Improvement Corporation

By: \_\_\_\_\_  
PRINT NAME:

Date: \_\_\_\_\_, 20\_\_

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

By: \_\_\_\_\_  
PRINT NAME:

## ATTACHMENT 1

<b>EIC MUNICIPAL AGREEMENT - Attachment 1</b>	<b>ENERGIZE NY PACE 1.0 PRODUCT DESCRIPTION</b>
<b>MAXIMUM AMOUNT OF FINANCING AVAILABLE</b>	10% of Appraised Value
<b>MINIMUM FINANCE AMOUNT</b>	\$5,000
<b>LENGTH OF FINANCING TERM</b>	Minimum term of 5 years and Maximum term of 20 Years
<b>ELIGIBLE MUNICIPALITIES</b>	Municipalities with a Credit Rating Above "A"
<b>ELIGIBLE PROJECTS</b>	Energy efficiency and renewable energy projects that comply with NYSEDA and investor owned utility programs including certain Remote Net Meter Projects
<b>ELIGIBLE PROPERTIES</b>	Existing buildings owned by an entity, other than an individual, including substantial renovations and new construction in the case of renewable energy projects
<b>ELIGIBLE PROPERTY OWNERS</b>	Not in bankruptcy; current on mortgage and property taxes for the past three years
<b>LOAN TO VALUE (LTV) LIMITATION</b>	Property's total amount of land secured loans is less than or equal to 90%, including the requested PACE financing
<b>ANNUAL CASH FLOW REQUIREMENT</b>	Estimated Annual Savings must be greater than estimated Annual Finance Charge
<b>COST EFFECTIVENESS/SIR TEST</b>	Estimated Savings must be greater than total cost of improvements
<b>EIC MEMBER OBLIGATED TO PAY DURING DELINQUENCY</b>	Yes
<b>ABILITY TO ADD PACE TAX CHARGE TO BILL DURING CONSTRUCTION</b>	No
<b>MUNICIPAL RESERVE POOLS</b>	Yes
<b>LINK TO ENERGIZE NY PACE 1.0 UNDERWRITING STANDARDS</b>	<a href="http://energizeny.org/images/uploads/ENY_PACE_1dot0_Standards.pdf">http://energizeny.org/images/uploads/ENY_PACE_1dot0_Standards.pdf</a>

## ATTACHMENT 2

<b>EIC MUNICIPAL AGREEMENT - Attachment 2</b>	<b>ENERGIZE NY PACE 2.0 PRODUCT DESCRIPTION</b>
<b>MAXIMUM AMOUNT OF FINANCING AVAILABLE</b>	35% of the property's appraised value
<b>MINIMUM FINANCE AMOUNT</b>	\$10,000
<b>LENGTH OF FINANCING TERM</b>	Minimum term of 5 years and Maximum term of 20 Years
<b>ELIGIBLE MUNICIPALITIES</b>	Municipalities with a Credit Rating Above Investment Grade, provided that municipalities rated A or better will have access to reserve pools that are separate from those for Below A rated municipalities
<b>ELIGIBLE PROJECTS</b>	Energy efficiency and renewable energy projects, including remote net metering, that comply with NYSEDA and investor owned utility programs or otherwise meet NYSEDA's Commercial PACE Guidelines; renewable energy projects on new construction and substantial renovations are eligible
<b>ELIGIBLE PROPERTIES</b>	Existing buildings owned by an entity, other than an individual, including new construction and substantial renovations in the case of renewable energy projects
<b>ELIGIBLE PROPERTY OWNERS</b>	Not in bankruptcy; current on mortgage and property taxes for the past three years
<b>LOAN TO VALUE (LTV) LIMITATION</b>	Property's total amount of land secured loans is less than or equal to 90%, including the requested PACE financing
<b>ANNUAL CASH FLOW REQUIREMENT</b>	No
<b>COST EFFECTIVENESS/SIR TEST</b>	Yes, must satisfy NYSEDA's cost effectiveness test, where the cumulative estimated savings must exceed the total cost of the project
<b>EIC MEMBER OBLIGATED TO PAY DURING DELINQUENCY</b>	Yes
<b>ABILITY TO ADD PACE TAX CHARGE TO BILL DURING CONSTRUCTION</b>	Yes
<b>MUNICIPAL RESERVE POOLS</b>	Yes
<b>Link to NYSEDA C-PACE Guidelines</b>	<a href="https://www.nyserda.ny.gov/cpace-guidelines">https://www.nyserda.ny.gov/cpace-guidelines</a>
<b>Link to Energize NY PACE 2.0 Underwriting Standards</b>	<a href="http://energizeny.org/images/uploads/ENY_PACE_2dot0_Standards.pdf">http://energizeny.org/images/uploads/ENY_PACE_2dot0_Standards.pdf</a>