



**ENERGY IMPROVEMENT CORPORATION  
OF NEW YORK  
COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY**

**REQUEST FOR PROPOSALS #2014-001  
FOR  
FINANCING SERVICES  
(Underwriter, Placement Agent, Direct Investor, Lender)**

**DUE DATE: Thursday, April 10, 2014 (3:00 PM EST)**



## Energy Improvement Corporation Commercial Property Assessed Clean Energy

Request for Proposals  
Related to Participation as Financing Services Provider  
as Underwriter, Placement Agent, Direct Investor, or Lender

### I. Introduction

The Energy Improvement Corporation (“EIC”), a New York Local Development Corporation, has established a Commercial Property Assessed Clean Energy Program (“PACE”) to provide financing to property owners in participating municipal member jurisdictions throughout New York State. EIC acts as a constituted authority on behalf of its municipal members pursuant to a municipal agreement and is charged with the administration of the PACE Program, including the issuance of debt to permanently fund eligible loans to property owners. PACE financing is available to eligible commercial, industrial, manufacturing, agricultural, multifamily (>4 units) and institutional property owners for eligible energy improvements that are permanently affixed to their privately-owned existing structures.

EIC manages Energize New York (ENY) which is a community-based energy program offered to its municipal members and funded through the Department of Energy (“DOE”) and New York State Energy Research and Development Authority (“NYSERDA”) grants and through revenue generated from financing activities. The ENY (Commercial PACE) Program is exclusively available to commercially-owned properties at this time.

Property Assessed Clean Energy (“PACE”) is authorized by General Municipal Law of New York, Article 5-L, Section 119-EE et seq. EIC was originally established by the Town of Bedford, NY to facilitate and finance qualified energy efficiency improvement projects and renewable energy system projects for residents, organizations, institutions and businesses on behalf of participating municipalities in New York. As of January 31, 2014, EIC had 12 member municipality participants<sup>1</sup> and there may be many additional potential participants in the future. Additionally, EIC has just been awarded additional grant monies from NYSERDA to further expand and broaden their implementation opportunities statewide.

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<sup>1</sup> See Exhibit A, Current Municipal Members.

Pursuant to Article 5-l of the General Municipal Law, a municipality which has adopted a local law implementing its provisions may make a loan to the owner of real property located within the municipal corporation to finance eligible projects. The municipality may further require that such loans “be repaid by the property owner through a charge on the real property benefitted by such loan and provide that such charge, which shall be shown as a separate item on the tax bill, shall be levied and collected at the same time and in the same manner as other municipal taxes.

All obligations issued by EIC shall be special limited obligations of EIC payable from the tax charges authorized by NYS GML Article 5-L, collected from participating property owners and backed ***by the obligation of the participating municipality to timely make all payments due to EIC regardless of whether the municipality has actually collected the tax charges from the property owner through the tax enforcement process.*** Although such payments to EIC will be subject to the normal annual budgetary ratification process, the municipality will be obligated to appropriate such amounts in each year as part of its obligation to levy NYS GML Article 5-L tax charges.

Only completed projects are eligible for funding secured by the tax charges authorized under NYS GML Article 5-L. EIC has secured a line of credit from First Niagara Bank that is available to finance PACE-secured projects in amounts not to exceed total draws of \$3 million. In order to permanently fund these completed projects, EIC is seeking participation by a Financing Services Provider(s) to (i) assist with final structuring and offering of bonds to reimburse advances from this existing (or future) lines of credit, or (ii) directly purchasing obligations secured by the NYS GML Article 5-L tax charges, and/or (iii) offer prompt, regular funding of projects completed through some other lending or capital markets facility not contemplated in (i) or (ii) above. In addition to the financing services provider selected through this RFP, EIC reserves the right to enter into “one off” agreements with property owner-sourced and funded projects<sup>2</sup>. EIC is seeking a minimum funding commitment of \$75 million through calendar year 2016.

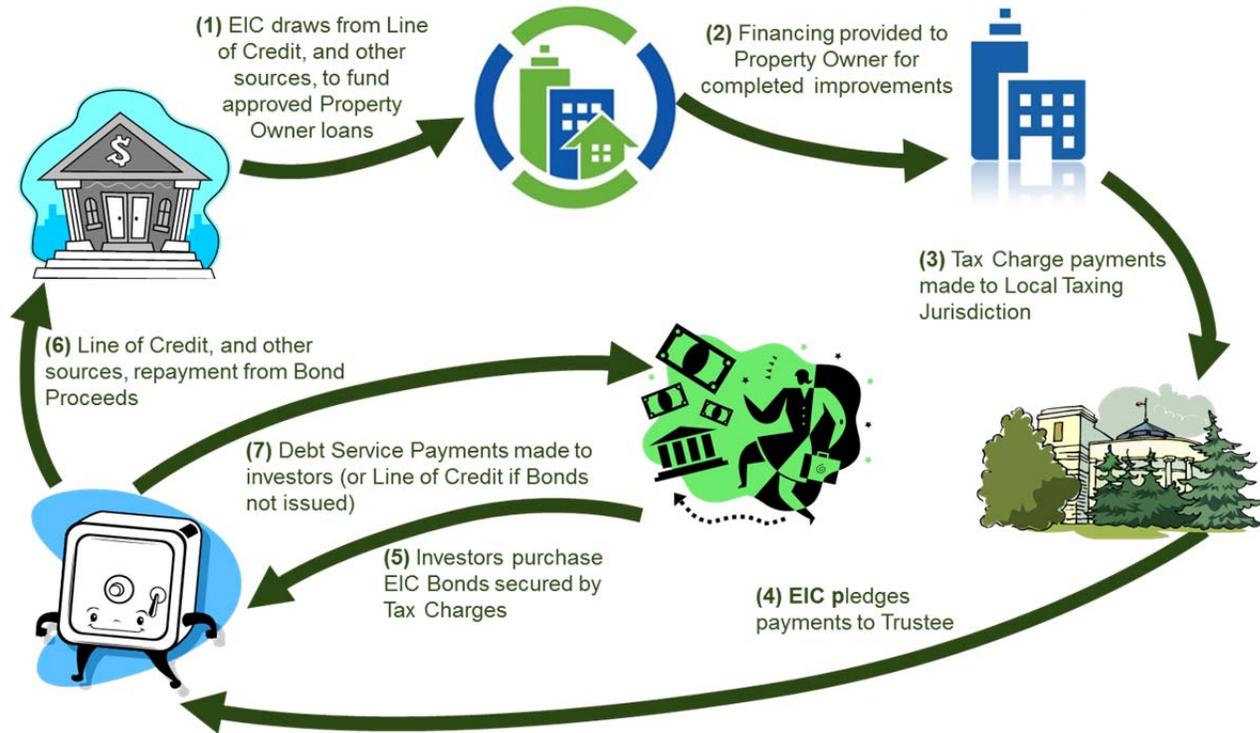
In addition to this RFP for tax charge secured funding, EIC, through a separate RFP, is interested in financing services providers that are able to secure or offer construction financing for PACE-approved, but not yet completed projects. The Authority would like to select its initial Financing Services Provider(s) by May 1, 2014. Squire Sanders LLP will serve as bond/disclosure/tax counsel to EIC in connection with the issuance of debt under the PACE program. A draft of the Master Indenture will be available as an addendum to this RFP in early March, 2014.

The Financing Services Provider(s) will be expected to play a role in the preparatory stages of the financing. These activities will include efforts related to the liquidity and debt service reserve requirements, and marketing strategy (if necessary) for the obligations.

The following schematic provides a high level representation of cash flow:

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<sup>2</sup> EIC intends to fund its directly sourced projects through this RFP selected funding source(s); however, single property-owners that directly negotiate tax charge PACE financing with a lender may fund through EIC if evidence of compliance with underwriting criteria is met.



## II. Background

EIC is headquartered in Westchester County, immediately north of New York City in the State of New York. Current municipal members, include 11 taxing authorities in Westchester County, and all of Orange County, except for the cities of Middletown, Port Jervis and Newburgh. Because of EIC's involvement in the deployment of energy solutions through their Energize NY work, their relationship with NYSERDA, and the close relationship with their municipal members, PACE financing is a natural extension of their expertise. Officers and staff of EIC have a depth of understanding in the energy and financial industries that makes them well suited to communicate the financing opportunity to stakeholders at all levels.

Property Assessed Clean Energy ("PACE") is a concept that grew out of the centuries old "assessment and special tax" types of municipal financing used throughout the nation for infrastructure improvements benefitting certain property owners. However, in the case of PACE, instead of the government identifying the benefitted properties, they simply authorize a PACE Program to operate in their jurisdiction, with the agreement to collect the tax charges, and then property-owners can opt in on a voluntary basis. Therefore, benefitted and charged property owners are determined individually. The EIC Program has established underwriting criteria to meet statutory, as well as reasonable, industry-accepted levels of property<sup>3</sup>, project and contractor eligibility. For properties with a first mortgage, EIC requires first mortgage-holder consent of the

<sup>3</sup> See Exhibit B, Program Underwriting Criteria

tax charge that is created by the property owner borrowing through the Program. Obligations, secured by the underlying tax charges, will be evidenced at the closing of each individual loan.

In the State of New York, tax collection laws require full payment by the taxing authority to all parties for whom they collect. Tax assessments and tax charges collected along with property taxes are considered *pari passu* on the tax bill and senior to any existing mortgage. These State laws essentially create a dedicated revenue stream of tax payments to pay the obligations issued by EIC. The tax charges are identified as a separate line item on the tax bill and are therefore traceable and segregated, upon receipt by the taxing authority solely for the payment of obligations secured by this revenue stream. The municipal agreement and local law further require the participating municipality to timely pay the tax charges to EIC even if the municipality has not yet completed the tax enforcement process. In the State of New York, there has never been a municipal bankruptcy.

In addition to Squire Sanders as bond / disclosure/ tax counsel; EIC has engaged Public Financial Management (PFM), as financial advisor, to assist with the credit analysis and preparation of EIC obligations for submission to Financing Service Providers; Sustainable Real Estate Solutions (SRS) to provide financial analysis, measurement and verification services related to each financed upgrade project; and U.S. Bank as Trustee. ENY works closely with the various NYSERDA efficiency and renewable energy programs to offer ENY (PACE) Finance along with other project services. ENY's focus is to help facilitate and build significant demand for upgrades within multi-family, affordable multi-family, not-for-profit, office, retail, other commercial, institutional and industrial facilities by offering PACE financing in conjunction with NYSERDA's various programs. As described herein, the financing team of EIC, Squire Sanders, and PFM have prepared an initial structure for consideration by proposers. However, it should be recognized that this is a relatively new security type and developing market; therefore, the team remains open to additional structuring suggestions of proposers that may further enhance the credit and pricing of EIC obligations.

### **III. Initially Suggested Financing Structure**

The preliminary plan of finance for the special limited obligations of EIC initially contemplates quarterly closings to fund all loans completed in the prior 90 days (with a reasonable cut off prior to closing). If quarterly closings occur using the existing (or new) line of credit, currently capped at \$12 million, bonds will be sold, either in the capital market or directly to investors, at regular intervals in order to reimburse the line of credit on an ongoing basis. Alternatively, the quarterly closing can be funded directly from long-term investors purchasing the obligations at that time. EIC's financing team has focused on creating a structure that, regardless of purchase structure, can robustly demonstrate adequate coverage for principal and interest payments to the investors.

In addition to the existing line of credit that is available for project funding, EIC has secured over \$1.145 million in additional funds that are available for reserves. Because of New York State requirements that reserve funds include a Federal component, these amounts have been derived from NYSERDA and DOE sources to provide reserves for bondholders and participating municipal members. Furthermore, additional reserve contributions are expected to be capitalized into bond proceeds and/or collected along with tax charges throughout the amortization period. The reserve levels incorporated to the initial structure are believed to provide more than adequate coverage in the unlikely event of tax charge delinquency. Furthermore, because the municipal members are required to make whole all tax charge recipients (EIC in this case) and are required to

have underlying ratings in the “A” category, the probability of a missed debt service payment are extremely unlikely. In order to support the municipal members with this obligation, in addition to the debt service reserve for bondholders, there is a specific portion of reserves that will be maintained to repay municipal members for any loss they experience in the event of default by a property owner that is not fully recovered through foreclosure.

In order to provide proposers with a standard set of assumptions from which to base their proposals, Respondents should assume that loan originations will fund according to the following schedule<sup>4</sup>:

Underlying Project Pipeline				
Dates	Year	Total Project Amount	Underlying Projects	Average Project Amount
8/1/2014	2014	\$5,000,000	20	\$250,000
11/1/2014	2014	10,000,000	20	500,000
2/1/2015	2015	6,500,000	13	500,000
5/1/2015	2015	7,000,000	14	500,000
8/1/2015	2015	10,000,000	20	500,000
11/1/2015	2015	6,500,000	13	500,000
2/1/2016	2016	6,500,000	13	500,000
5/1/2016	2016	7,000,000	14	500,000
8/1/2016	2016	10,000,000	20	500,000
11/1/2016	2016	6,500,000	13	500,000
Total		\$75,000,000	160	

Additionally, EIC’s preliminary estimates of reserve fund allocations, based on the above origination schedule are provided, along with additional amounts from property owners. Reserve funding is depicted in the following graphs against (i) total debt service, and (ii) average individual property owner annual payment. It is important to recognize that PACE assessments are collected along with property taxes, NY State does not allow partial payments, PACE tax charges cannot be accelerated, and municipal members agree, in the first instance, to make full payment of all tax charges to EIC<sup>5</sup>. As a result, draws on reserves due to borrower defaults are highly unlikely and the reserves serve to provide additional credit support. Assumptions included in these illustrations include funding to liquidity and reserve funds at closing as follows:

**Cash Flow Stabilization Fund (liquidity)**– amounts to be deposited at closing (capitalized amount of 1% of principal), and as an additional charge (0.35% of outstanding principal) throughout the amortization period of debt service payment by the property owner. This Cash Flow Stabilization Fund is available for debt service inequities due to standardized debt service payment dates and irregular collection periods of municipal members. Withdrawal

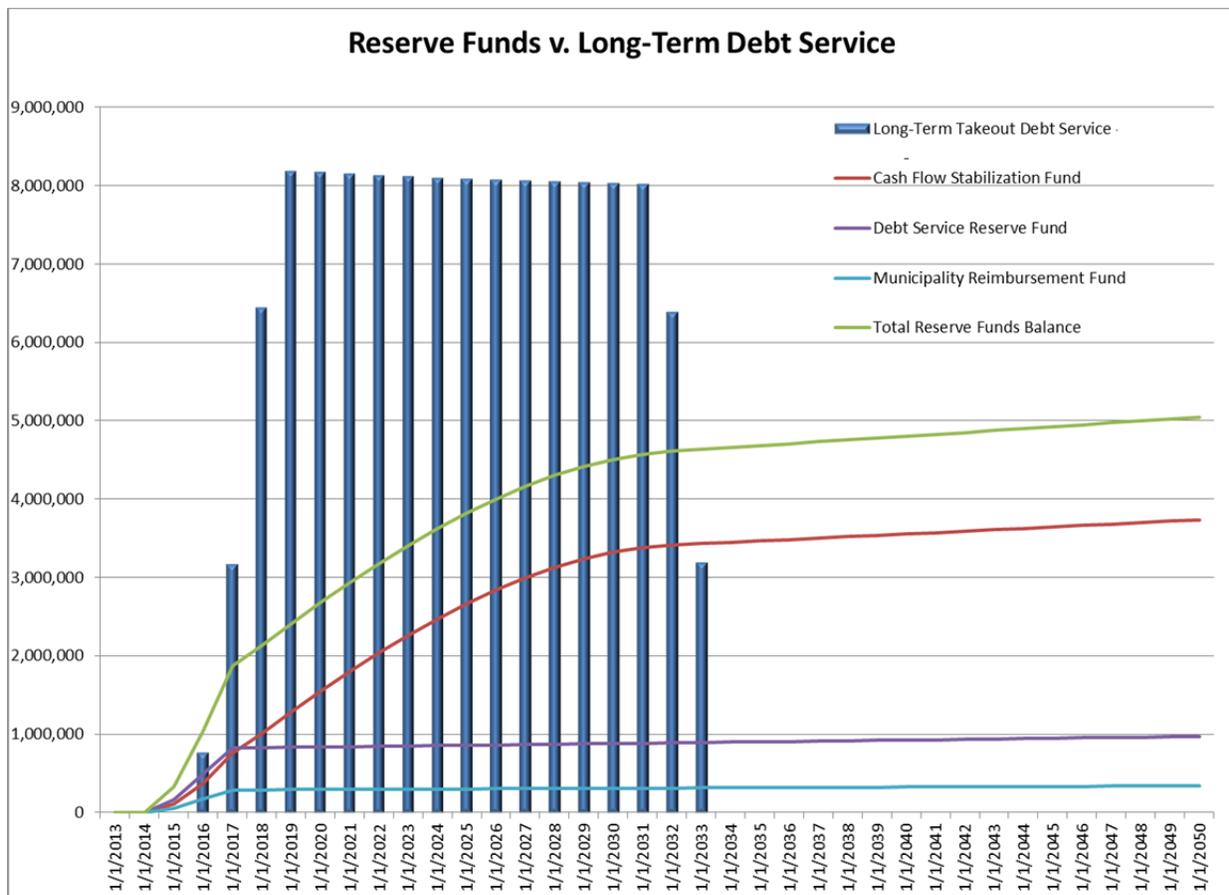
<sup>4</sup> Pipeline schedule is a projection based on overall transaction goals, not committed projects.

<sup>5</sup> See Exhibit C, Municipal Agreement.

from this fund does NOT constitute an event of default and will be regularly replenished from tax surcharge receipts. This fund is pledged and payable to bondholders only, with transferability to DSRF upon overfunding at to-be-determined levels.

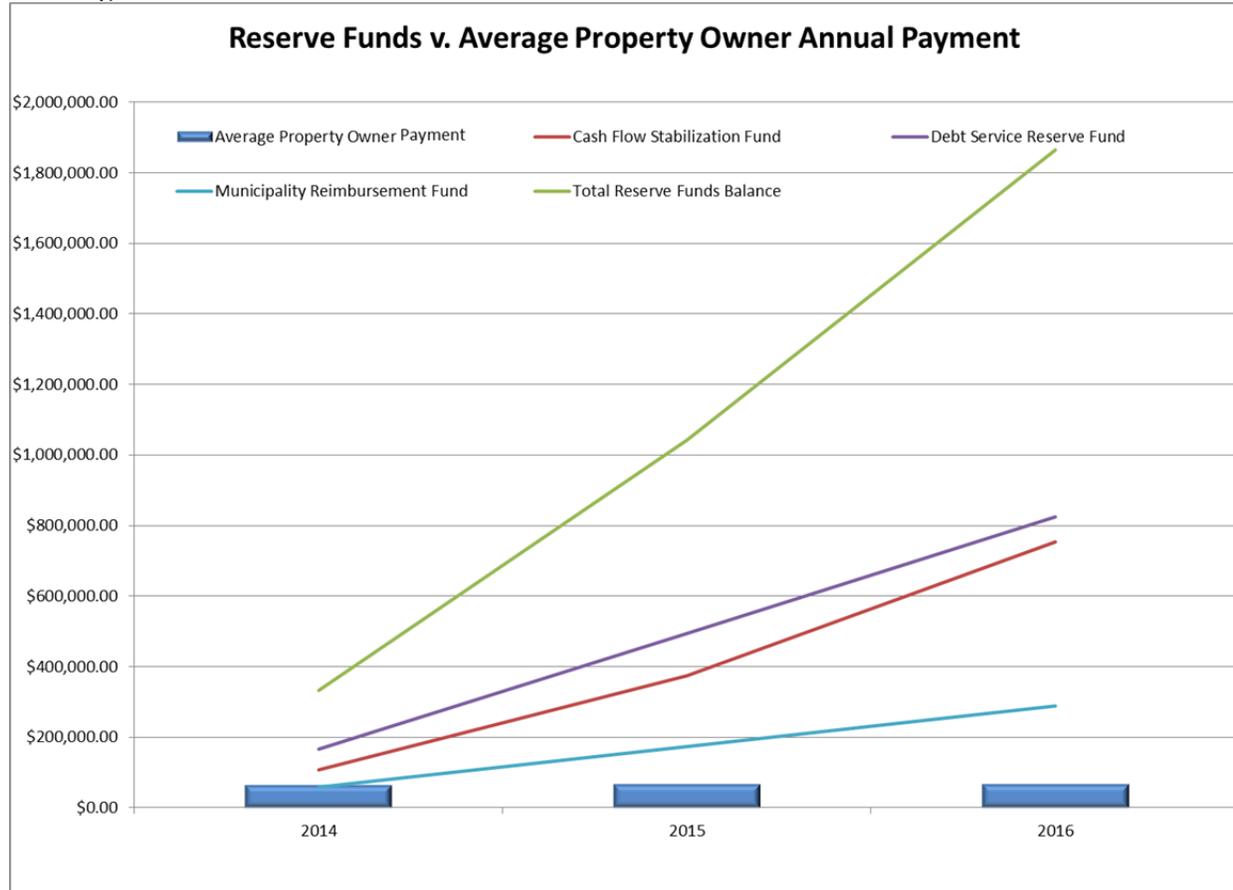
**Debt Service Reserve Fund** – amounts to be deposited at closing (0.65% of principal from existing federally sourced funds). The Debt Service Reserve Fund is pledged and available for payment to bondholders only, in the event of non-payment by a municipal member. Transfer to Administrative Expense Fund upon overfunding at to-be-determined levels.

**Municipal Reimbursement Fund** – amounts to be deposited at closing (0.35% of principal from existing federally sourced funds). The Municipal Reimbursement Fund is available for payment to municipal members, after a tax payment default and foreclosure sale that results in less than full recovery of tax surcharges, paid by the municipal member during delinquency and default period. This Fund reimburses the municipal member only for unpaid tax charges related to the Energy Improvement tax charges that are not recovered through the foreclosure sale.



This graph provides a visual depiction of the rapid accumulation of reserves in relation to total debt service, based on the initial three years origination and ongoing collections deposited to the Funds. As shown, total liquidity and reserve funds exceed 25% of total debt service for all outstanding

obligations by the time all obligations are outstanding, during the ramp up period, the percentage is even higher.



As illustrated above, available Funds exceed 6x the average property owner annual tax charge, providing evidence of the overfunded adequacy in the unlikely event of tax charge delinquency that is not paid (as required by law) by a municipal member.

The State of New York has recently announced the launch of the New York Green Bank. EIC intends to seek additional funding from the Green Bank to further bolster reserves and/or credit support for municipal members. However, until such funding is identified, proposers should assume that such funds are not available.

In order to evidence selection of Financing Services Partner(s), EIC anticipates execution of a bond purchase agreement or similar contract that thoroughly documents the terms, conditions and pricing of the selected provider.

#### IV. Financing Services Provider

EIC seeks a Financing Services Provider that is able to provide funds, upon project completion, at a fixed rate, for the term of the loan, up to 20 years, for tax charge (Commercial PACE) secured obligations. Property owners will enter into a Financing Agreement with EIC, as the constituted authority, on behalf of the participating municipality and will authorize the levy of tax charges on

their property tax bill for the term of the obligation that will be enforced by the participating municipality in the same manner as other municipal taxes. Consequently, property owners must pay their entire tax bill (including the Article 5-L Charges) to avoid becoming delinquent and subjecting their property to the tax enforcement process. These tax charge revenues, together with the aforementioned reserves and investment earnings on these reserves, will provide the sole repayment source available to investors, whether short or long-term. The amount financed will include capitalized interest where the period between the closing date and the initial payment on the tax bill is sufficiently long. The availability of funds will be secured by a tax charge prior to the release of funds for payment of eligible improvements.

EIC has contemplated numerous structures including short-term revolving funds with future “take-out” bond sale, and direct sale of long term debt obligations by EIC. EIC prefers to engage a Financing Service Provider, or team of providers, that readily demonstrates the capability and performance experience to deliver a program funding solution that assures consistent funding at the lowest possible cost.

Any Respondent seeking to provide Program financing services must demonstrate its experience, capability and commitment to finance the Program as described in the preceding paragraphs. To the extent that funding is being offered by a third party, a commitment letter will be required and may be defined as confidential by the Respondent (as provided in Section V).

## **V. Proposal Responses**

Please provide responses to the questions included in this Section V.

Investors with specific market segment interest are welcome to respond to this RFP, and should take care to specifically acknowledge their investment criteria parameters. EIC reserves the right to require and select a placement agent to serve in the role of broker-dealer for any obligations that are placed with respondents that are direct purchasers.

### **a. Credit and Market Strategy**

- Please discuss your understanding of the credit and any potential changes or enhancements to the security for the bonds, including use of additional enhancement or adjustments to the liquidity and debt service reserve funded amounts.
- Identify whether a credit rating will be required for your firm’s participation.
- Assuming the Program pursues a credit rating, and based on your understanding of the credit, describe which publicly available criteria from the credit rating agencies, if any, is likely to be applied to this Program. Additionally, please indicate what rating you believe will be given to the Program.
  - Furthermore, if a credit rating is pursued, describe how many of the three main credit rating agencies should be approached and indicate which ones and why, if not all three.
- Provide a short-case study highlighting how the proposed team has worked with a new credit and successfully either brought it to market or helped with securing the needed financing. What lessons were learned that may be applied to the described Program. Discuss your marketing strategy to place Program debt, and identify the expected investor base, if applicable. Elaborate on any challenges that EIC will face in the current market environment.

**b. Indicative Pricing**

- Please provide indicative coupons and yields for each maturity from 1 to 20 years. Include identification of the current spread to an easily recognized index (as of March 20, 2014) for each maturity. Clearly state all assumptions (e.g. debt service reserve fund, call feature, etc.).
- Identify any comparable bond pricing that was used to determine the proposed spread for EIC bonds.
- Describe intended frequency of rate reset and method of determination at each period. All PACE loans have a defined interest rate at the time of closing that cannot be reset after placement of the tax charge, therefore, a defined period for rate setting is imperative to correctly providing amortization disclosure to the property owner.

**c. Experience**

- Outline your firm's experience (par value and number of transactions per year) with any assessment or special tax secured bonds issued in the past five years.
- If your firm has purchased or placed PACE tax charge secured obligations, please identify program(s), par amounts, tenor, pricing and other specific terms – e.g. reserve funds, foreclosure rights, etc.
- Briefly discuss your firm's organizational structure, management, and capitalization. Clearly identify your intended role and, if capital is to be committed from outside investors, provide commitment letter(s) (investors may be identified "CONFIDENTIAL").
- To the extent that your strategy **does not** rely on committed investors, discuss funding strategy that will meet desired "on demand" financing (either short term or long term) for completed projects.
- Include a link to the most recent financial statement from your firm (or if private, include as an attachment), acknowledging capacity to underwrite up to \$75 million in obligations. If you are serving as aggregator for (an) outside investor(s), you must include a signed acknowledgement of their commitment to purchase obligations secured by your firm. Outside investors can be identified as CONFIDENTIAL and will remain unnamed in all public disclosure of proposals received.

**d. Project Team**

- EIC expects that proposing firms have the interest and capacity to serve as senior manager for this transaction. Please indicate if your firm is interested in participating as co-manager, or intends to partner with other firms and/or investors to secure financing to purchase these obligations. If your funding sources are CONFIDENTIAL, please indicate in every occurrence to assure that names will be redacted from public disclosure.
- Detail the level of staffing and experience of the individuals you intend to commit to this assignment. Identify the lead contact and supporting individuals with their specific roles; include phone numbers and email addresses. As an appendix, provide resumes for the participating contacts, emphasizing recent comparable financing experience, especially as it relates to EIC's financing plan. Include at least two references for the firm's lead contact that have worked with the lead contact on a comparable transaction.
- Identify your proposed underwriter's counsel, if any. NYEIC has already retained disclosure counsel for preparation of the official statement or other offering documentation as may be required.

**e. Fees**

- Provide the proposed takedown for each maturity of the bonds (years 1 to 20), or other fee basis payable to the proposer. Include a detailed breakdown of included expenses (e.g., underwriter's counsel) on an actual cost basis.

**VI. Attachments**

Include with your Proposal a form of recent bond purchase agreement that you would suggest as a template for the PACE secured obligations.

**VII. Proposal Instructions**

Responses should be no more than 20 pages with a minimum 10-point font and with 1 inch margins. A cover letter that does not exceed two (2) pages may be attached to your materials and will not count against the page limit, nor will the appendix of resumes, or any included financial verification documentation for either your firm or your investor(s). Responses to the requested information should be given in the same order provided in this request for proposals.

***Potential respondents are responsible for accessing Onvia and NYS Contract Reporter to receive all addendum or updated information related to this RFP.***

All questions regarding this proposal should be submitted electronically to the single point of contact, Joe Del Sindaco, via e-mail: [treasurer@energizeny.org](mailto:treasurer@energizeny.org), with the subject line description "RFP #2014-001-Question" no later than March 26, 2014, 3 pm (EDT). Failure to comply may result in the disqualification of your firm from the selection process. Responses to questions will be posted to Onvia and NYS Contract Reporter by March 28, 2014.

Proposal should be delivered as **one hard copy and a flash drive or CD** containing a pdf-formatted electronic copy. Proposals must be submitted to the following no later than **3:00 pm EDT, on Thursday, April 10, 2014:**

Joe Del Sindaco, Treasurer  
Energy Improvement Corporation  
2051 Baldwin Road, Suite 107  
Yorktown Heights, NY 10598  
(914) 302-7308

## VIII. RFP Schedule

Mar 6 – RFP distribution via OnVia and NYS Contract Reporter  
Week of 3/17 or 3/24 – Webinar presentation of credit to potential bidders  
With Webinar – Draft Master Indenture available for distribution to potential bidders  
Mar 26, 3pm (EDT) – Questions from potential bidders due  
Mar 28 – Responses to Questions distributed via Onvia  
Apr 10 – Proposals due  
Apr 17 – EIC team completes evaluation of proposals  
Apr 18 – Evaluation team discussion of proposals and recommendations  
Apr 21 – Notice to firms selected for interviews  
Week of Apr 28 – Interviews  
May 5 – Notice of selected financing provider

*All dates subject to change at the sole discretion of Energy Improvement Corporation.*

## IX. Evaluation Criteria

Proposals will undergo an evaluation process conducted by a committee selected by EIC. The committee will evaluate the proposals based upon the following criteria:

- (50%) **Price/cost:** Expected ability to place the refunding bonds at the lowest interest rates. Proposed takedown.
- (25%) **Experience and capabilities of the firm in similar transactions:** The firm-wide experience marketing and serving as senior managing underwriter, placement agent, or direct purchaser for obligations similar to the proposed EIC offering.
- (25%) **Experience of the assigned individuals:** The experience and understanding of the assigned individuals with comparable financing plans.
- Interviews to clarify or expand on the response (to be conducted at the discretion of EIC);
- Significant innovative structuring proposals in response to the RFP.

EIC retains the right to request clarification of any information submitted in any proposal, to waive any irregularities in any proposal, to schedule interviews with one or more firms, and/or to accept or reject any proposal in whole or in part.

## X. Additional Disclosures

### **Municipal Advisor Rules**

EIC is aware of the amendments to Section 15B of the Securities Exchange Act of 1934 effectuated by Section 975 of the Dodd-Frank Act, as well as the SEC Release No. 34-70462 (September 20, 2013). In this regard, please note that EIC considers discussions with potential Proposers, and the review of proposals, to be arms-length negotiations. EIC recognizes that Proposers have financial and other interests that differ from EIC; as such, EIC does not consider a fiduciary relationship to arise in this context. EIC has engaged an independent registered municipal advisor (“IRMA”) with

the intent of relying (i.e., taking into careful consideration, along with any other information deemed relevant or appropriate, but not necessarily following) on that IRMA for advice related to any potential transactions, and consequently to allow Proposers to qualify for the exemption provided by 17 CFR §240.15Ba1-1(d)(3)(vi) (the “IRMA exemption”). If a Proposer intends to avail itself of the IRMA exemption, EIC requests that the Proposer supplies written materials setting forth the material contents of its proposal to the IRMA concurrently with, or prior to, discussing a proposal with, or submitting a proposal to, EIC.

**CONFIDENTIAL Information**

Careful consideration should be given before confidential information is submitted to EIC as part of any proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers Law, Article 6, provides for public access to information EIC possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to EIC that the Proposer wishes to have treated as proprietary and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501 <http://www.nyserda.ny.gov/About/-/media/Files/About/Contact/NYSERDA-Regulations.ashx>. However, EIC cannot guarantee the confidentiality of any information submitted.

Exhibit A  
Energy Improvement Corporation  
Current Municipal Members

Bedford  
Croton-on-the-Hudson  
Greenburgh  
Lewisboro  
North Salem  
Orange County<sup>6</sup>  
Ossining  
Peekskill  
Pound Ridge  
Somers  
White Plains  
Yorktown

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<sup>6</sup> Excluding the cities of Middletown, Port Jervis and Newburgh

**Exhibit B**  
**Program Underwriting Criteria**

- **Property**
  - Location in municipality of EIC member
  - Commercial, Agricultural, Industrial, and Institutional property
  - Multifamily rental property ( $\geq 5$  units)
  - Non-profit owned residential property
  - Clear title
  - Existing building, not a new construction
  - Property not in foreclosure
  - Current on mortgage payments
  - Existing Loan to value less than 80%
  - No prior tax delinquencies within last 3 years
  - No owner bankruptcy within last 7 years
- **Project**
  - Energy savings or renewable energy improvements
  - Permanent Installation
  - Savings-to-Investment Ratio  $> 1$  and Cash flow = 101% of annual financing payment
  - Financing term does not exceed useful life of project
- **Contractor**
  - NYSERDA qualified

**Exhibit C**  
**Local Law and Municipal Agreement**

**LOCAL LAW NO.     – 2012**

**A LOCAL LAW TO ESTABLISH A SUSTAINABLE ENERGY LOAN PROGRAM IN THE \_\_\_\_\_**

Be it enacted by the \_\_\_\_\_ of the County of \_\_\_\_\_ as follows:

**Section 1.** The Code of the \_\_\_\_\_ is hereby amended by adding a new Chapter \_\_\_\_\_, entitled “Energize NY Benefit Financing Program,” to read as follows:

**ARTICLE I**

**§1. Legislative findings, intent and purpose, authority.**

- A. It is the policy of both the \_\_\_\_\_ and the State of New York to achieve energy efficiency and renewable energy goals, reduce greenhouse gas emissions, mitigate the effect of global climate change, and advance a clean energy economy. The \_\_\_\_\_ finds that it can fulfill this policy by providing property assessed clean energy financing to property owners for the installation of renewable energy systems and energy efficiency measures. This chapter establishes a program that will allow the Energy Improvement Corporation (“EIC”), a local development corporation, acting on behalf of the \_\_\_\_\_, to make funds available to qualified property owners that will be repaid by such property owners through charges on the real properties benefited by such funds, thereby fulfilling the purposes of this chapter and fulfilling an important public purpose.
- B. The \_\_\_\_\_ is authorized to implement this Energize NY Benefit Financing Program pursuant to Article 5-L of the New York General Municipal Law.
- C. This chapter shall be known and may be cited as the “Energize NY Benefit Financing Program Law of the \_\_\_\_\_”.

**§2. Definitions**

For purposes of this chapter, and unless otherwise expressly stated or unless the context requires, the following terms shall have the meanings indicated:

**Authority** – The New York State Energy Research and Development Authority, as defined by subdivision two of section eighteen hundred fifty-one of the public authorities law, or its successor.

**EIC** – the Energy Improvement Corporation, a local development corporation, duly organized under section fourteen hundred eleven of the Not-For-Profit Corporation Law, authorized hereby on behalf of the \_\_\_\_\_ to implement the Energize NY Benefit Financing Program by providing funds to qualified property owners (as defined in this chapter) and providing for repayment of such funds from monies collected by the \_\_\_\_\_ tax collector as a charge to be levied on the real property and collected in the same manner and same form as the \_\_\_\_\_ taxes.

**Energy Audit** – A formal evaluation or “assessment” of the energy consumption of a permanent building or structural improvement to real property, conducted by a contractor certified by the Authority, or certified by a certifying entity approved by the Authority, for the purpose of identifying appropriate energy efficiency improvements that could be made to the property.

**Energy Efficiency Improvement** – Any renovation or retrofitting of a building to reduce energy consumption, such as window and door replacement, lighting, caulking, weatherstripping, air sealing, insulation, and heating and cooling system upgrades, and similar improvements, determined to be cost-effective pursuant to criteria established by the Authority, not including lighting measures or household appliances that are not permanently fixed to real property.

**Qualified Property Owner** – An owner of residential or commercial real property located within the boundaries of the \_\_\_\_\_ that is determined to be eligible to participate in the Energize NY Benefit Financing Program under the procedures for eligibility set forth under this chapter.

**Renewable Energy System** – An energy generating system for the generation of electric or thermal energy, to be used primarily at such property, by means of solar thermal, solar photovoltaic, wind, geothermal, anaerobic digester gas-to-electricity systems, fuel cell technologies, or other renewable energy technology approved by the Authority not including the combustion or pyrolysis of solid waste.

**Renewable Energy System Feasibility Study** – A written study, conducted by a contractor certified by the Authority, or certified by a certifying entity approved by the Authority, for the purpose of determining the feasibility of installing a renewable energy system.

### **§3. Establishment of an Energize NY Benefit Financing Program**

A. An Energize NY Benefit Financing Program is hereby established by the \_\_\_\_\_, whereby EIC acting on its behalf, may provide funds to

Qualified Property Owners in accordance with the procedures set forth under this chapter, to finance the acquisition, construction and installation of Renewable Energy Systems and Energy Efficiency Improvements and the verification of the installation of such systems and improvements.

- B. The funds provided shall not exceed the lesser of ten percent of the appraised value of the real property where the Renewable Energy Systems and/or Energy Efficiency Improvements will be located, or the actual cost of installing the Renewable Energy Systems and/or Energy Efficiency Improvements, including the costs of necessary equipment, materials, and labor and the cost of verification of such systems and improvements.

#### **§4. Procedures for eligibility**

- A. Any property owner in the \_\_\_\_\_ may submit application to EIC on such forms as have been prepared by EIC and made available to property owners on the website of EIC and at the \_\_\_\_\_ offices.
- B. Every application submitted by a property owner shall be reviewed by EIC acting on behalf of the \_\_\_\_\_, which shall make a positive or negative determination on such application based upon the criteria for making a financing enumerated in subsection A of section 5 of this chapter. EIC may also request further information from the property owner where necessary to aid in its determination.
- C. If a positive determination on an application is made by EIC acting on behalf of the \_\_\_\_\_, the property owner shall be deemed a Qualified Property Owner and shall be eligible to participate in the Energize NY Benefit Financing Program in accordance with the procedure set forth under section 6 of this chapter; provided that in no case shall a property owner that has received funds from another municipal corporation for the acquisition, construction and installation of Energy Efficiency Improvements and/or Renewable Energy Systems be deemed a Qualified Property Owner.

#### **§5. Application criteria**

- A. Upon the submission of an application, EIC acting on behalf of the \_\_\_\_\_, shall make a positive or negative determination on such application based upon the following criteria for the making of a financing:
1. The proposed Energy Efficiency Improvements and/or Renewable Energy Systems are determined to be cost effective by the Authority;
  2. The proposed Energy Efficiency Improvements and/or Renewable Energy Systems will generate an estimated annual cost savings greater than the annual charge payments;

3. Sufficient funds are available to provide to the property owner;
4. The property owner is current in payments on any existing mortgage;
5. The property owner is current in payments on any existing real property taxes and has been current on real property taxes for the previous three years; and
6. Such additional criteria, not inconsistent with the criteria set forth above, as the \_\_\_\_\_, or EIC acting on its behalf, may set from time to time.

**§6. Opt-in, Energize Finance Agreement**

- A. A Qualified Property Owner may participate in the Energize NY Benefit Financing Program through the execution of an Energize Finance Agreement made by and between the Qualified Property Owner and EIC, acting on the behalf of the \_\_\_\_\_.
- B. Upon execution of the Energize Finance Agreement, the Qualified Property Owner shall be eligible to receive funds from EIC acting on behalf of \_\_\_\_\_, for the acquisition, construction, and installation of qualifying Renewable Energy Systems and Energy Efficiency Improvements; provided the requirements of section 7 of this chapter have been met.
- C. The Energize Finance Agreement shall include the terms and conditions of repayment set forth under section 8 of this chapter.

**§7. Energy audit, renewable energy system feasibility study**

- A. No funds shall be made available for Energy Efficiency Improvements unless determined to be appropriate through an Energy Audit as defined in Section 2.
- B. No funds shall be made available for a Renewable Energy System unless determined to be feasible through a Renewable Energy System Feasibility Study as defined in Section 2.
- C. The cost of such Energy Audit and/or Renewable Energy System Feasibility Study shall be borne solely by the property owner but may be included in the financed amount if the work is approved.

**§8. Terms and conditions of repayment**

The Energize Finance Agreement between the Qualified Property Owner and EIC acting on behalf of the \_\_\_\_\_, shall set forth the terms and conditions of repayment in accordance with the following:

- A. The principal amount of the funds paid to the Qualified Property Owner hereunder, together with the interest thereon, shall be paid by the property owner as a charge on

their \_\_\_\_\_ tax bill and shall be levied and collected at the same time and in the same manner as \_\_\_\_\_ property taxes, provided that such charge shall be separately listed on the tax bill. The \_\_\_\_\_, shall make payment to EIC or its designee in the amount of all such separately listed charges within 30 days of the \_\_\_\_\_ tax due date.

- B. The term of such repayment shall be determined at the time the Energize Finance Agreement is executed by the property owner and EIC, provided that in no case shall the term exceed the weighted average of the useful life of the systems and improvements as determined by EIC acting on behalf of the \_\_\_\_\_.
- C. The rate of interest for the charge shall be fixed by EIC acting on behalf of the \_\_\_\_\_ at the time the Energize Finance Agreement is executed by the property owner and EIC.
- D. The charge shall constitute a lien upon the real property benefited by the Energize NY Benefit Financing Program and shall run with the land. A transferee of title to the benefited real property shall be required to pay any future installments, including interest thereon.

**§9. Verification and report**

- A. EIC shall be responsible for verifying and reporting to the \_\_\_\_\_ on the installation and performance of Renewable Energy Systems and Energy Efficiency Improvements financed by such program.
- B. The \_\_\_\_\_ shall verify and report on the installation and performance of Renewable Energy Systems and Energy Efficiency Improvements financed by the Energize NY Benefit Financing Program in such form and manner as the Authority may establish.

**Section 2.** This local law shall take effect upon filing with the Secretary of State.

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

This Agreement made as of this \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Agreement”), by and between the \_\_\_\_\_ (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 New York 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 established by local law, pursuant to Article 5-L of the General Municipal Law of the State of New York, a sustainable energy loan program for the issuance of financing to the owners of real property located within the Participating Municipality to finance Energy Improvements, and have authorized EIC to act on behalf of the Participating Municipality to carry out the Program through, among other things, the issuance of financing to property owners within such Participating Municipality, and have met the minimum criteria established by EIC to admit new Participating Municipalities; and

WHEREAS, the Municipality adopted Local Law \_\_\_\_\_ on \_\_\_\_\_, 20\_\_, 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;

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) Receive and review applications submitted by property owners within the Municipality for financing of Energy Improvements (“Property Owner(s)”), and approve or disapprove such applications in accordance with underwriting procedures and requirements established by EIC.
- b) Review the applications, energy assessments and scopes of work prepared for and by the Property Owners to establish the amount of financings to be approved pursuant to the requirements of the Program.
- c) Execute finance agreements (the “Finance Agreement”) by and between EIC (on behalf of the Municipality) and the Property Owners for financing of Energy Improvements, which 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 upon execution.
- d) 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) 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 certificate in accordance with the terms of the Finance Agreement and the Program.
- e) 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 non-satisfied Benefited Property (including each newly approved Benefited Property):
    - a. the date of the Financing Agreement,
    - b. the notional amount of the financing,
    - c. the total principal balance and accrued interest outstanding,
    - d. the annual payment due to EIC (which shall include principal and accrued interest) associated with such Benefited Property (including the amount of accrued interest on the initial payment, if different);
  - v. the total annual payment due to EIC from all Benefited Properties in the Participating Municipality (which shall include principal and accrued interest), which shall be paid by the Municipality within thirty (30) days of the date upon which payment is due to the Municipality as part 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 an account (the “EIC Trust Account”) held by a trustee that will accept payments from the Municipality made in accordance with Paragraph 2(d) below, and create a separate account (the “EIC Administrative Fee Account”) to receive the transfer of those funds deposited within the EIC Trust Account 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 Financing 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 due date of the municipal taxes, including the charge pursuant to a Finance Agreement, remit payment to the EIC Trust Account 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 to deliver payments to EIC would 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. Program Modification

The Municipality may 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. 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 a Participating Municipality to deliver payments to EIC within thirty (30) days of when due 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 a Participating Municipality’s 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.

6.

Reserve Funds and Permanent Loss

- (a) EIC shall maintain 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. 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. All Reserve Funds will be held at a bank or trust company located and authorized to do business in NYS. 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 a Member 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.

## 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:  
Thomas Bregman  
Energy Improvement Corporation  
321 Bedford Rd,  
Bedford Hills, NY 10536

Joseph Del Sindaco  
Energy Improvement Corporation  
321 Bedford Rd,  
Bedford Hills, NY 10536

Attention: Tom Bregman  
Joseph Del Sindaco

E-mail: tom@energizeny.org  
Treasurer@energizeny.org

With a copy to:

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

MUNICIPALITY: \_\_\_\_\_

With a copy to:

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:

\_\_\_\_\_