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CLEAR FORM

Utah C-PACE Municipality Agreement

This agreement ("**Agreement**") is entered into and effective as of the _____ day of _____, 20 ____, by and between _____, a political subdivision of the State of Utah ("**Municipality**") and the Utah Governor's Office of Energy Development, a body politic and corporate of the State of Utah ("**OED**").

1. Commercial Property Assessed Clean Energy, or C-PACE, is a mechanism allowable under Utah Code §§ 11-42-209 for financing energy efficiency, renewable energy, and water conservation projects for commercial buildings through a voluntary assessment on the property tax bill.

2. OED will facilitate a statewide C-PACE program to streamline statutory and programmatic requirements. A political subdivision may voluntarily opt-in to the statewide program.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions and undertakings herein set forth, the parties agree as follows,

1. The above recitals are hereby included and incorporated as a part of this agreement.
2. The Municipality agrees to opt-in and use the OED C-PACE Program.
3. In accordance with Utah Code §§ 11-42-301 (9)(b) the Municipality must maintain and use an authorized vendor list. The parties agree to use the authorized vendor list, which meets the criteria set forth in Utah Code §§ 11-42-301 (9)(b), maintained and administered by OED.

OED shall provide the following:

1. Provide standardized program forms including application, lender consent, and municipality opt-in agreement.
2. Maintain an online authorized vendor list.
3. Review or secure a third-party review of applications including technical review of proposed energy/water conservation measures.
4. Verify installation of projects.

MUNCIPALITY shall provide the following:

1. Adopt a designation ordinance or resolution to designate a voluntary assessment area in accordance with Utah Code §§ 11-42-201 to 209.
2. Levy an assessment in accordance with Utah Code §§ 11-42-401 to 416.

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3. Issue a municipal bond in accordance with the Municipality's bonding authority and statute.
4. Collect installment payments in accordance with Utah Code §§ 11-42-401-416.
5. Enforce bond agreement in accordance with terms of the bond.
6. Release and discharge assessment in accordance with Utah Code §§ 11-42-501 to 506.

STANDARD TERMS

1. **Confidentiality.** OED is a governmental entity subject to the Government Records Access and Management Act, Utah Code §§ 63G-2-101 to 901 ("GRAMA") Accordingly, certain records within possession or control, including without limitation, the Agreement, may be subject to public disclosure. Pursuant to section 63G-2-309 of GRAMA, any confidential information provided to OED believed to be protected from disclosure, must be accompanied by a written claim of confidentiality and a concise statement of reasons supporting such a claim.

2. **Indemnification.**

   2.1 Indemnification by OED. OED is a governmental entity under the Governmental Immunity Act of Utah, Utah Code §§ 63G -7-101 to 904, as amended (the "Act"). Nothing in the Agreement shall be construed as a waiver by OED of any protections, rights, or defenses applicable to OED under the Act, including without limitation, the provisions of section 63G-7-604 regarding limitation of judgments. It is not the intent of OED to incur by contract any liability for the operations, acts, or omissions of the other Party or any third party and nothing in the Agreement shall be so interpreted or construed. Without limiting the generality of the foregoing, and notwithstanding any provisions to the contrary in the Agreement, any indemnity obligations of OED contained in the Agreement are subject to the Act, are limited to the amounts established in section 63G-7-604 of the Act, and are further limited only to claims that arise from the negligent acts or omissions of OED.

   2.2 Indemnification by Municipality. Municipality shall indemnify, defend, and hold harmless OED its directors, officers, agents and employees against any actions, suits, proceedings, liabilities and damages that may result from the negligent acts or omissions of Municipality, its officers, agents or employees in connection with this Agreement.

   2.3 OED Not Liable. OED is not liable for the debt or the responsibility of the Municipality to repay the bond. Further, OED is not liable if the approved vendor does not perform its duties or fails to perform its duties to the requisite standard of care, as outlined in the project contract.

3. **Relationship of Parties.** In assuming and performing the obligations of this Agreement, Municipality and OED are each acting as independent parties and neither shall be considered or represent itself as a joint venturer, partner, agent or employee of the other.

Neither party shall use the name or any trademark of the other party in any advertising, sales promotion or other publicity matter without the prior written approval of the other party.

4. **Termination.** This Agreement may be terminated by either party at any time and from time to time, by giving written notice thereof to the other party. Such termination shall be effective thirty (30) days after receipt of such notice.

5. **Miscellaneous.**

5.1 Assignment. Neither party shall assign or transfer any interest in this Agreement, nor assign any claims for money due or to become due under this Agreement, without the prior written consent of the other party.

5.2 Entire Agreement. This Agreement, with its attachments, constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes any other written or oral understanding of the parties. This Agreement may not be modified except by written instrument executed by both parties.

5.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns.

5.4 Governing Law and Disputes. This Agreement shall be interpreted and construed in accordance with the laws of the State of Utah, without application of any principles of choice of laws. Disputes that cannot be resolved by Municipality and OED shall be determined by a court of competent jurisdiction in the State of Utah, in the County of Salt Lake.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives effective as of the day and year first written above.

By: _____	_____
Municipality Representative	OED Staff
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Please submit agreement and/or questions to: utahcpace@utah.gov