

**PACE OWNER CONTRACT**

THIS PACE OWNER CONTRACT (“Contract”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Brazos County, Texas (“Brazos County”) and \_\_\_\_\_ (“Property Owner”).

**RECITALS**

A. Brazos County has established a program to facilitate the financing by property owners of energy and water conserving improvements for commercial, industrial, agricultural, and large multifamily residential (5 or more dwelling units) real property (the “PACE Program”) pursuant to Resolution No. \_\_\_\_\_, dated \_\_\_\_\_ 2015, adopted by the Brazos County Commissioners Court in accordance with the provisions of the Property Assessed Clean Energy Act (the “PACE Act”), Texas Local Government Code, Chapter 399. The Brazos County Commissioners Court has designated the entire territory within Brazos County’s jurisdiction as a region within which the authorized County official named below and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified projects on the owner’s property. Unless otherwise expressly provided in this Contract, all terms used herein have the same meanings ascribed to them in the PACE Act.

B. Property Owner is the legal and record owner of the tract of qualified commercial, industrial, agricultural, or large multifamily residential real property within Brazos County’s jurisdiction located at \_\_\_\_\_, \_\_\_\_\_, Texas, and more fully described in Exhibit A attached hereto and made a part hereof (the “Property”).

C. Pursuant to Application number \_\_\_\_\_, Property Owner has applied to Brazos County to participate in the PACE Program by installing or modifying on the Property certain permanent improvements intended to decrease water or energy consumption or demand, which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act. The installation or modification of such qualified improvements on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “Project”).

D. Financing for the Project will be provided to Property Owner by \_\_\_\_\_ (the “Lender”), a qualified lender selected by Property Owner, pursuant to a PACE Lender Contract executed by Lender and Brazos County, as required by Section 399.006(c) of the PACE Act. The PACE Lender Contract calls for Brazos County to impose a contractual assessment (the “Assessment”) on the Property at the request of Property Owner for the benefit of Lender, as permitted by the PACE Act. The financing will include only those costs and fees for which an assessment may be imposed under the PACE Act. Pursuant to the PACE Lender Contract, Lender and Property Owner have

negotiated the terms of a contract (the "Financing Documents"), the unsigned form of which is attached hereto as Exhibit B, for the repayment to Lender of the financing advanced to Property Owner for the Project. Brazos County has agreed to maintain and continue the Assessment for the benefit of Lender until such financing is repaid in full and to release the Assessment upon notice from Lender of such payment, or foreclose the lien securing the Assessment for the benefit of Lender upon notice from Lender of a default by Property Owner. Lender has agreed to service the debt secured by the Assessment, either directly or through a designated servicer.

F. As required by Section 399.010 of the PACE Act, Property Owner notified the holder(s) of any mortgage liens on the Property at least thirty (30) days prior to the date of this Contract of Property Owner's intention to participate in the PACE Program. The written consent of each mortgage holder to the Assessment was obtained prior to the date of this Contract and is attached hereto as Exhibit C and made a part hereof.

### **AGREEMENT**

NOW, THEREFORE, the parties hereby agree as follows:

1. Imposition of Assessment. In consideration for the financing advanced or to be advanced to Property Owner by Lender for the Project under the PACE Program pursuant to the PACE Lender Contract, Property Owner hereby requests and agrees to the imposition by Brazos County of the Assessment on the Property in the total amount of \$\_\_\_\_\_, together with all contractual interest provided in the contract between Property Owner and Lender according to the Financing Documents attached hereto as Exhibit B, which set out the amount financed, repayment installments, and amortization schedule for such Assessment. Property Owner promises and agrees to pay such amount and interest to the order of Brazos County, in care of Lender, in satisfaction of the Assessment imposed pursuant to this Contract and the PACE Act. Accordingly, Brazos County hereby imposes the Assessment on the Property to secure the payment of such amount, in accordance with the requirements of the PACE Program and the provisions of the PACE Act.

2. Maintenance and Enforcement of Assessment. In consideration for Lender's agreement to advance financing to Property Owner for the Project pursuant to the PACE Lender Contract, Brazos County agrees to maintain and continue the Assessment on the Property for the benefit of Lender until the amount set out above, contractual interest, and any statutory penalties or interest, attorney's fees, or costs accrued thereon in the event of default are paid in full and to release the Assessment upon notice from Lender of such payment. Brazos County agrees to enforce the Assessment against the Property for the benefit of Lender in the event of a default by Property Owner.

3. Installments. The Assessment, including the amount financed and contractual interest, is due and payable in installments as set forth in the Financing Documents attached hereto as Exhibit B and made a part hereof. As required by Section 399.009(a) (8) of the PACE Act, the period during which such installments are payable does not exceed the useful life of the Project. When the Assessment has been paid in full, Brazos County's rights under this Contract

will cease and terminate, and upon notice from Lender Brazos County will execute and record a release of the Assessment and this Contract.

4. Assignment of Right to Receive Installments. Lender will have the right to assign or transfer the right to receive the installments of the financing secured by the Assessment, provided all of the following conditions are met:

- (a) The assignment or transfer is made to a qualified lender as defined in the PACE Lender Contract;
- (b) Property Owner, the PACE Program Administrator, and Brazos County are notified in writing of the assignment or transfer and the address to which payment of the future installments should be mailed at least 30 days before the next installment is due according to the payment schedule included in the Financing Documents attached hereto as Exhibit B; and
- (c) The assignee or transferee of the right to receive the payments executes an explicit written assumption of all of Lender's obligations under PACE Lender Contract.

Upon written notice to Property Owner, the PACE Program Administrator, and Brazos County of an assignment or transfer of the right to receive the installments that meets all of these conditions, Brazos County will execute a release of the Lender making such assignment from the PACE Lender Contract and all of the obligations of the Lender under such Contract accruing after the date of the assignment will be assumed by and transferred to such assignee or transferee. Any attempt to assign or transfer the right to receive the installments that does not meet all of these conditions is void.

5. Lien Priority and Enforcement. Pursuant to Section 399.014 of the PACE Act,

(a) Delinquent installments of the debt secured by the Assessment will incur interest and penalties in the same manner and in the same amount as delinquent property taxes, viz., a delinquent installment incurs a penalty of 6% of the amount of the installment for the first calendar month it is delinquent plus 1% for each additional month or portion of a month the installment remains unpaid prior to July 1 of the year in which it becomes delinquent. However, an installment delinquent on July 1 incurs a total penalty of 12% of the amount of the delinquent installment without regard to the number of months it has been delinquent. A delinquent installment will also accrue interest at the rate of 1% for each month or portion of a month that the installment remains unpaid. Subject to the limitation set out in paragraph 13 below, penalties and interest payable under this paragraph will be retained by Brazos County to compensate it for the cost of enforcing the Assessment.

(b) The Assessment, together with any penalties and interest thereon,

(1) is a first and prior lien against the Property from the date on which this Contract is filed in the Official Public Records of Brazos County, as provided by

Section 399.013 of the PACE Act, until the financing secured by the Assessment and any penalties and interest are paid; and

(2) such lien has the same priority status as a lien for any other ad valorem tax, pursuant to Section 399.014(a)(2) of the PACE Act.

(c) The lien created by the Assessment runs with the land, and any portion of the debt secured by the Assessment that has not yet become due is not eliminated by foreclosure of a property tax lien, according to Section 399.014(b) of the PACE Act. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment will be transferred to the succeeding owner without recourse on Brazos County or the PACE Program Administrator, and with recourse on Property Owner only for any unpaid installments of the Assessment that became due during Property Owner's period of ownership.

(d) In the event of a default by Property Owner in payment of the installments called for by the Financing Documents, the lien created by the Assessment will be enforced by Brazos County in the same manner according to Texas Tax Code Secs. 33.41 to 34.23 that a property tax lien against real property may be enforced by a local government, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(e) In a suit to collect a delinquent installment of the Assessment, Brazos County will be entitled to recover costs and expenses, including attorney's fees in the amount of 15% of the total amount of the delinquent installment, penalties, and interest due, in the same manner according to Texas Tax Code Sec. 33.48 as in a suit to collect a delinquent property tax.

6. Written Contract Required by PACE Act. This Contract constitutes a written contract for the Assessment between the Property Owner and Brazos County as required by Section 399.006 of the PACE Act. A Notice of Contractual Assessment Lien will be recorded in the Official Public Records of Brazos County as notice of the contractual Assessment, in accordance with the requirements of Section 399.013 of the PACE Act.

7. Binding Effect. This Contract inures to the benefit of Brazos County and is binding upon Property Owner, its heirs, successors, and assigns.

8. Notices. All notices and other communications required or permitted by this Contract shall be in writing and mailed by certified mail, return receipt requested, addressed to the other party at its address shown below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

9. Governing Law. This Contract shall in all respects be governed by and construed in accordance with the laws of the State of Texas.

10. Entire Agreement. This Contract constitutes the entire agreement between Brazos County and Property Owner with respect to the subject matter hereof and may not be amended or altered in any manner except by a document in writing executed by both parties.

11. Further Assurances. Property Owner further covenants and agrees to do, execute and deliver, or cause to be done, executed, and delivered all such further acts for implementing the intention of this Contract as may be reasonably necessary or required.

12. Counterparts. This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

13. Interest. Interest and penalties in the event of default, as provided above, are explicitly authorized by Section 399.014(d) of the PACE Act. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Brazos County and contractual interest payable to Lender under the Financing Documents, exceed the maximum amount or rate of nonusurious interest that may be contracted for, charged, or collected under Texas law (the "usury limit"). If the total amount of interest payable to Brazos County and Lender exceeds the usury limit, the interest payable to Brazos County will be reduced and any interest in excess of the usury limit will be credited to the amount payable to Brazos County or refunded. This provision overrides any conflicting provisions in this Contract.

14. Special Provisions. *(to be added as necessary)*

EXECUTED as of \_\_\_\_\_, 2015 by:

PROPERTY OWNER:

BRAZOS COUNTY, TEXAS

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

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

Kristeen Roe, Brazos County Tax  
Assessor-Collector

Address: \_\_\_\_\_

4151 County Park ct.  
Bryan, Texas 77802

\_\_\_\_\_

AUTHORIZED

ED COUNTY OFFICIAL



**EXHIBIT A**  
**PROPERTY DESCRIPTION**

**EXHIBIT B**  
**FINANCING DOCUMENTS**



**EXHIBIT C**

**MORTGAGE HOLDER(S) CONSENT**